known as the Bailey Hill Road. (The first part of the highway leading to Petitioner's property is known as the Bailey Hill Road, the last part is known as the Old Bailey Hill Road and pursuant to common and Vermont law, Petitioner has a private property interest in this highway known as the abutter's "right of access".) As a result of these impediments and obstructions on the highway, Petitioner is denied vehicular access and the use and enjoyment of his land. Yet, all across Vermont highways similar to the highway leading to Petitioner's land are plowed to ensure access to the abutting private property. Respondents believe that Petitioner should accept the obstructions and impediments to travel, purchase an expensive snowmobile, join the private, but publicly-sponsored VAST organization and place a VAST decal on the snowmobile attesting to Petitioner's support and membership in VAST as the means for Petitioner to access his land over this public highway.

Petitioner appeals the decision in two actions which were consolidated for trial. In the first action, Petitioner had requested Cavendish to withhold permission from VAST to the use of Old Bailey Hill Road as a trail and to provide the mandatory maintenance. Cavendish refused both requests and undertook statutory proceedings to down-classify Old Bailey Hill Road to class 4 which classification does not require mandatory winter maintenance. Petitioner's appeal of this reclassification action is Docket No. 29-1-99 Wrcv. Printed Case (PC) 710-722. In addition, Petitioner requested a declaration that the portion of the highway leading through the Proctor Piper State Forest known as the Bailey Hill Road was part of the town highway system or a public highway in its own right, an injunction enjoining Cavendish and ANR from failing to perform the mandatory maintenance on the public highway route to Petitioner's property and rulings that the Respondents' actions have deprived the Petitioner of the First Amendment rights of free speech and association, the Fifth Amendment protection that private property not be taken except upon

just compensation, the Fourteenth Amendment rights to procedural due process, substantive due process and the equal protection of the laws, the right of interstate travel and that Petitioner be provided the protections of 42 U.S.C. § 1983 and 42 U.S.C. § 1988. Petitioner's declaratory judgment action is Docket No. 436-9-99 Wrcv. PC 643-667.

Petitioner believed that the issuance of an injunction would be a certainty, because during the period of Petitioner's appeal of Cavendish's reclassification of Old Bailey Hill Road from class 3 to class 4, its class 3 status is stayed until the court renders its decision. See *Hansen v. Town of Charleston*, 157 Vt. 329 (1999) (court reviewing controlling statutes and stating reclassification appeal is subject to the same procedures as for laying out highways) and 19 V.S.A. § 743 (procedures for laying out highways provide that appeals to opening of the highway "shall be stayed until the court renders its decision."). A town has a mandatory obligation to maintain class 3 public highways including snow removal. *Sagar v. Warren Selectboard*, 170 Vt. 167 (1999) (court reviewing controlling statutes). An injunction against a town is an appropriate tool when the town acts illegally. *Hinesburg Sand & Gravel Co. v. Town of Hinesburg*, 135 Vt. 484 (1977). The loss of First Amendment freedoms, for even short periods of time constitutes irreparable harm. *Elrod v. Burns*, 427 U.S. 347 (1976). The effect of government action that limits the "ability to perform the ordinary tasks of daily life which require an automobile, is sufficient to justify injunctive relief." *Wooley v. Maynard*, 430 U.S. 705, 712 (1977).

In Petitioner's Motion For Injunctive Relief, PC 590-642, Petitioner claims several constitutional rights are violated by the Respondents' actions. First, the requirement that Petitioner must join VAST and affix a decal to a snowmobile, violates the Petitioner's First Amendment rights of free speech and association. Vermont law mandates "[a] person shall not operate a snowmobile unless ... [the rider] displays a valid Vermont trails maintenance

assessment decal ... on ... the snowmobile...." 23 V.S.A. § 3202(a). A person must join a VAST affiliated local club in order to get the decal. "'Trails maintenance assessment' (TMA) means a permit issued by the Vermont Association of Snow Travelers, Inc. granting use of Vermont snowmobile trails on public and private lands." 23 V.S.A. § 3201(7). Petitioner refuses to capitulate to the Respondents' actions in forcing a VAST trail onto the only public highway leading to his property and onto Petitioner's right of access and refuses to join VAST and display their decals as a means of accessing his property. See *Wooley* at 714 (citizens enjoy right not to speak) and *Griswold v. Connecticut*, 381 U.S. 479, 483 (1965) (citizens have right to join or not to join all manner of associations).

Secondly, Petitioner's right to interstate travel is violated by the Respondents' actions in forcing the location of the VAST trail onto the only public highway leading to his property and onto Petitioner's right of access, by the failure to plow this highway and by down-classifying it to class 4, such that the Petitioner can no longer use this public highway to access his property. See *Saenz v. Roe*, 526 U.S. 489, 500 (1999) (right to travel includes the right to travel freely to and from another state "and to use [that state's] highway facilities ...." Additionally, the right to travel includes "the right to move into another State and become a resident of that State." *Id.* at 502.

Thirdly, Petitioner's Fourteenth Amendment right to the equal protection of the laws is violated by the Respondents' actions noted above where all other landowners abutting class 3 town highways situated similarly to the Petitioner do not suffer a VAST trail located upon the only highway leading to their property, the Respondents and other towns in Vermont provide the mandatory plowing and no other landowners suffer the down-classifying of the sole public highway leading to their property to class 4. Stricter equal protection review applies if classification infringes upon a fundamental right. *SBC*

Enterprises, Inc. v. City of South Burlington, 892 F. Supp. 578 (1995). Fundamental rights include rights of free speech and association and the right of interstate travel. *Heisse v. State of Vermont*, 519 F. Supp. 36 (1980).

In Petitioner's Reply To Defendant Town Of Cavendish's And Defendant Richard Svec's Opposition to [Petitioner's] Motion For Injunctive Relief, PC 547-576, Petitioner stated that his Fourteenth Amendment substantive due process rights have been violated by the Respondents.

> The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth, a 'personal' right, whether the 'property' in question be a welfare check, a home, or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other. *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552 (1972).

"[I]t is well established that a government land use decision may give rise to a substantive due process violation if the decisionmaking process is arbitrary and capricious." *Southview Associates, Ltd. v. Bongartz*, 980 F.2d 84, 96 (2d Cir. 1992). See *Southview* at 104 (examples of Fourteenth Amendment substantive due process violations are acting without authority of law, refusing to act contrary to law, acting due to political pressure or interfering with government process based on political reasons). The Respondents acted without authority of law when they forced the location of the VAST trail onto the highway providing access to Petitioner's property and onto Petitioner's right of access, they refused to act contrary to law when they failed to discontinue the use of Old Bailey Hill Road as a VAST trail and to plow this road, they acted due to political pressure brought on by those who desire a recreational trail on Old Bailey Hill Road and they interfered with legitimate government process which until

the Respondents' recent actions provided that Old Bailey Hill Road is a class 3 public highway to be used as the only highway means of accessing Petitioner's property. Another ground of substantive due process violation is a "regulation that goes so far that it has the same effect as a taking by eminent domain is an invalid exercise of the police power, violative of the Due Process Clause." *Id.* at 96 (quoting *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 197 (1985)). "The remedy for a regulation that goes too far, under the due process theory, is not 'just compensation,' but invalidation of the regulation, and if authorized and appropriate, actual damages." *Williamson* at 197. See also *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987) (same).

The trial court, with judge Alan W. Cheever presiding, denied Petitioner's request for injunctive relief. See Appendix 33a-34a for selected excerpts on the record. Obviously, the Petitioner claims the trial judge was dead-wrong, as the trial court's decision in denying an injunction enabled a *per se* nuisance to persist, allowed Cavendish to continue its unlawful conduct and brought to bear upon the Petitioner the deprivation of the constitutional and statutory protections noted above.

Ultimately, after four days of trial, and at the urging of trial judge Alan W. Cook, the parties entered into a Stipulation of Settlement. On May 16, 2003, judge Cook entered an Order of Dismissal in each case which included essentially the same language, i.e. "with leave to reopen within ninety (90) days if the conditions set forth in paragraphs 12 and 13 of the Stipulation for Settlement are

not satisfied." Docket No. 29-1-99 Wrcv.[2] PC 15-17, Appendix 13a.

Exactly ninety days later when the Respondents had failed to fulfill the contingency of paragraph 13,[3] the Petitioner on Thursday August 14, 2003 mailed to the trial court a letter and Motion to Inform the Court that Plaintiff Rescinds Settlement (Motion to Inform) explicitly requesting the "resumption of the trial be set at the earliest convenience of the court." PC 13-14, Appendix 30a-32a. This letter and Motion to Inform was received by the clerk of the court on Monday August 18, 2003. Second Supplemental Printed Case (2nd SPC) 1, Appendix 29a. Since three calendar days after Thursday is Sunday, the clerk's receipt on Monday is considered three days after August 14, 2003. Later, mainly because Respondents were attempting to exert jurisdiction over Old Bailey Hill Road after August 14, 2003, even though Petitioner had requested the reopening of the trial in accordance with the May 16, 2003 Orders of Dismissal, and because the trial court had not yet ruled on the Motion to Inform, the Petitioner on September 30, 2003 mailed a Motion to Resume Trial. PC 10-12, Appendix 25a-28a.

The trial court, with judge Mary Miles Teachout now presiding, denied Petitioner's request to reopen trial. In response to Petitioner's Motion to Inform (which requested the very action of reopening provided for in the May 16, 2003 Orders of Dismissal), the trial court stated: "Dismissed as a motion, as it does not contain an appropriate request for court action." Docket No. 29-1-99 Wrcv. PC 3, Appendix

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[2] Petitioner will consistently cite to Docket 29-1-99 Wrcv because the trial court in its May 16, 2003 Orders of Dismissal, in its October 16, 2003 Orders Denying Petitioner's request to reopen and Motion To Inform and in its November 10, 2003 Orders Denying Petitioner's Motion To Resume Trial used equivalent language in each Docket.

[3] There is no dispute that the contingency was not satisfied as Cavendish admits and states: "Granted, the Town of Cavendish did not reclassify TH 36 prior to the ninety (90) days within which the parties were allowed to reopen the case." Brief in the Vermont Supreme Court of Cavendish at 12.

23a-24a. In response to Petitioner's Motion to Resume Trial (where neither the Petitioner nor any of the Respondents cited or relied upon V.R.C.P. 60(b) in their motions and memoranda), the trial court *sua-sponte* undertook a V.R.C.P. 60(b) analysis and stated in full: "Plaintiff has not shown grounds to set aside the Order of May 16, 2003 in the manner required by Rule 60(b) of the Vermont Rules of Civil Procedure. Neither has Plaintiff shown that the contingency of reclassification failed to occur." Docket No. 29-1-99 Wrcv. PC 1, Appendix 21a-22a.

In Petitioner's Brief to the Vermont Supreme Court, at page 1, FN 4 Petitioner noted that other towns in Vermont provide winter maintenance to private property situated similarly to the Petitioner's property by referencing trial Exhibit 123, Town of Plymouth official Highway Map, which indicates that the Town of Plymouth plows TH 38, Ranger Road which is identical with the [Petitioner's] situation. At page 4, FN 9, the Petitioner recounted his trial testimony:

> I don't have the money for a snowmobile, and I refuse to join, if I did get a snowmobile to get, go to my property, I would have to join VAST, and I would have to put decals all over my personal property, and I refuse to join VAST. It is not a good organization. To put someone through what they put me though, I would, I would try, I would shoot myself before I had to join VAST. PC 75.

At page 4, FN 11, the Petitioner referenced his trial testimony for testimony on winter use of class 3 town highways through state forests—in summary, of 104 class 3 town highways statewide providing access to private property, only the Old Bailey Hill Road is not plowed. PC 89-93. At pages 11-12, the Petitioner argued that the trial court abused it discretion when it failed to reopen the trial in contravention of Petitioner's timely request. At pages 12-22, the Petitioner requested the Vermont Supreme Court to hold the Stipulation of Settlement void as against public

policy as it: 1) provides for the wrongful continuation of the obstruction and lack of winter plowing on public highways; 2) requires Petitioner to grant VAST a right of way over his property in contravention of 10 V.S.A. § 441(c) and 23 U.S.C. § 206; 3) the Stipulation of Settlement was not properly executed by Cavendish and Chester and 4) the Stipulation of Settlement impermissibly binds Cavendish and Chester to act in a predetermined manner. At page 18, the Petitioner argued that it was Petitioner's "request to the Town of Cavendish to provide year round maintenance on these public highways and the Town of Cavendish's denial and retaliation in down-classifying Old Bailey Hill Road to class 4 that set off this matter." At page 19, FN 22, the Petitioner argued that the intent of the Town of Cavendish's May 12, 1997 Board of Selectmen's Meeting and the May 21, 1997 Town of Chester Board of Selectmen's Meeting (both meetings of which Petitioner had no notice of and were attended by VAST members) was to force the location of the VAST trail onto Old Bailey Hill Road and Petitioner's right of access, and thereby "deprive the Plaintiff of access." At page 20, FN 22, the Petitioner noted the trial court judge's retort to Chester's counsel in regards to these meetings: "It's to the effect that the Town of Chester colluded with the Town of Cavendish to extinguish [Petitioner's] rights to the road and to foster agenda that would make VAST able to exploit his situation to a greater degree ...." PC 82. At page 22, the Petitioner argued "The only interest in enforcing the Stipulation of Settlement would be to chase the [Petitioner] out of the State of Vermont by denying him the rightful use of public highways." At page 22, the Petitioner argued "[Petitioner's] access right over the Bailey Hill Road and class 3 TH 36 Old Bailey Hill road is being held hostage to the [Petitioner] granting such easement so that VAST could partially relocate their recreational trail off of these public highways and thereby make TH 36, Old Bailey Hill Road available for the winter access requirements of the [Petitioner]." At pages 22-23, the Petitioner notes that the

Vermont statutes restrict the location of VAST trails to "where permission is given." 10 V.S.A. § 441(c). Additionally, federal law 23 U.S.C. § 206(g)(1) prohibits the use of any funds to be used for the "condemnation of any kind of interest in property", § 206(h)(4)(A) requires that if private property is affected by a recreational trail the state "shall obtain written assurances that the owner of the land will cooperate" and § 206(h)(4)(B) requires that if the trail is located on privately owned land it "must be accompanied by an easement ... that ensures public access." At pages 28-30, the Petitioner requested the Vermont Supreme Court to reverse the trial court's denial of an injunction to prohibit the Respondents from further obstructing the Bailey Hill Road and Old Bailey Hill Road with a VAST recreational snowmobile trail and to prohibit Cavendish from failing to provide the mandatory winter maintenance. At page 30, the Petitioner requested the Vermont Supreme Court to find that the trial court erred in denying the injunction for failing to find Petitioner was deprived of the constitutional and statutory protections noted above.

Petitioner now petitions this Court claiming the Vermont Supreme Court denied the Petitioner the due process of law when it: 1) wrongfully ignored the significance of Petitioner's mailing on August , 2003 of a letter and Motion to Inform which is the appropriate and sufficient manner for requesting to reopen the trial; 2) erroneously found that the Petitioner's Motion to Inform was filed on August 25, 2003, rather than on August 18, 2003 when it was received by the clerk (Vermont Supreme Court citing first part of V.R.C.P. 5(e), but not citing second part which prohibits clerk from refusing to file papers presented for that purpose) and 3) by wrongfully applying the time requirements of V.R.C.P. 3 for the commencement of an action in its analogy to the time requirements for a request to reopen trial (Vermont Supreme Court citing first method of commencing an action, i.e., by first filing with the court a complaint followed by service of summons and the

complaint upon the defendant within 60 days, but not citing the second method provided by the rule which provides an equivalent means of commencement of an action, i.e., by first making service upon the defendant followed by filing with the court within 20 days—which such equivalent method is the one adhered to by the Petitioner).

The trial court's refusal to reopen the trial and the Vermont Supreme Court's affirmance, denies the Petitioner the due process of law. These courts are ignoring clear precedent and equitable principles which hold that the Petitioner's case must be reopened and are instead picking and choosing selected parts of certain rules of civil procedure to advance their "analysis" where the other parts of the very same rules would require finding Petitioner timely requested the reopening of the trial. Turning a blind eye to the proper rules is fundamentally unjust. The Vermont Rules of Civil Procedure "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." V.R.C.P. 1. Further the Vermont "rules are based on the Federal Rules of Civil Procedure. Federal cases interpreting the Federal Rules are an authoritative source for the interpretation of identical provisions of the Vermont Rules." V.R.C.P. 1 Reporter's Notes.

Throughout this litigation Petitioner repeatedly asserted that Respondents' actions violated various constitutional and federal statutory provisions. The Vermont courts considered these claims. First, the trial court wrongfully failed to find violations when it denied injunctive relief. The trial court compounded its denial of constitutional protections when it later wrongfully ignored the Petitioner's timely request to reopen the trial thereby denying the Petitioner of the due process of law. The Vermont Supreme Court likewise denied Petitioner the due process of law when it failed to overturn the trial court's incorrect ruling on Petitioner's request to reopen the trial and the effect of this affirmance is a continuation of the

wrongful deprivations.[4] Furthermore, Petitioner specifically requested the Vermont Supreme Court to hold the Stipulation of Settlement void as a matter of public policy which necessarily required an analysis comparing the Stipulation of Settlement against the constitutional and federal statutory deprivations claimed by Petitioner—albeit it remains unclear what analysis was undertaken.

REASONS FOR GRANTING THE WRIT

The Vermont Supreme Court's decision directly conflicts with *Pioneer Investment Services Co. v. Brunswick Associates Ltd., Assoc.*, 507 U.S. 380 (1993) (equitable principles guide trial judge's decision whether to excuse a late filing for "excusable neglect"). Additionally, the decision directly conflicts with Second Circuit opinions *Muze Inc. v. Digital on Demand, Inc.*, 356 F.3d 492 (2d Cir. 2004) (application by letter, rather than filing a formal motion, within settlement period requires reopening of trial) and *Cappillino v. Hyde Park Central School District*, 135 F.3d 264 (2d Cir. 1998) (same). (These Second Circuit decisions conflict with the practice of the Fourth Circuit. See *Choice Hotels International, Inc. v. Goodwin and Boone*, 11 F.3d 469, 470 (4th Cir. 1993) ("a party [may] move for good cause within 30 days to reopen this action if settlement is not consummated.")) Also, the decision directly conflicts with the First Circuit opinion of *Kinan v. Cohen*, 268 F.3d 27 (1st Cir. 2001) (conditional dismissal orders are not reviewed under Rule 60(b)). Moreover, the decision is directly at odds with the logic of prior Vermont opinions which hold that a

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[4] After Petitioner timely requested the reopening of the trial so that Petitioner could secure the statutorily required winter maintenance for the public highway route to his property, Cavendish began statutory proceedings concerning TH 36 Old Bailey Hill Road to assign a different classification to this highway and thereby be relieved of the obligation to provide this winter maintenance—dragging Petitioner into yet further litigation. Petitioner's appeal of this action is now before the State of Vermont's Transportation Board as Docket Number T.B. 215 (2003).

motion is timely when it is mailed prior to the expiration of the specified time period and is then later filed after the expiration of that period. See *Derosia v. Liberty Mut. Ins. Co.*, 155 Vt. 178 (1990) (motion to alter or amend timely when mailed within 10 days after judgment and filed with court 11 days after judgment) and *Fournier v. Fournier*, 169 Vt. 600 (mem. 1999) (same).

Procedurally, this case presents an opportunity for the Court to provide clear guidance to all federal and state courts of first impression on the proper procedure for requesting the reopening of a trial after the non-fulfillment of a conditional dismissal order. The federal and state (which are based on federal) rules of civil procedure are silent on the proper manner in which to reopen a trial after the failure of a conditional settlement. The Vermont Supreme Court's opinion illustrates the danger to litigants when the rules are not explicit and clear, as it: 1) is in contravention of the lower court's Orders of Dismissal; 2) incorrectly validates the lower court's inappropriate reliance on V.R.C.P. 60(b)(6); 3) incorrectly relies upon V.R.C.P. 3 in its reasoning and 4) fails to employ the correct rules of civil procedure. Failure of the Court to provide guidance on the proper application of the rules of civil procedure to reopen a trial will allow the opportunity for depriving litigants of due process to persist and will foster needless appeals. This Court will grant certiorari when a case raises "important questions as to the proper application of the Federal Rules of Civil Procedure ...." *Societe Internationale v. Rogers*, 357 U.S. 197, 203 (1958) (Court reviewing whether application of Fed. R. Civ. P. 34 or 41 is the appropriate basis for dismissing a complaint with prejudice for failure to comply with a discovery order). See also *Schiavone v. Fortune*, 477 U.S. 21, 27 (1986) (Court clarifying application of Fed. R. Civ. P. 15(c) and restating its earlier announcement "that the spirit and inclination of the rules favored decisions on the merits, and rejected an approach that pleading is a game of skill in which one misstep may be decisive.").

More fundamentally and substantively, this case presents an opportunity for the Court to protect private property from the threats posed by governmental entities who have illegitimate designs on acquiring private property for improper uses. See 10A E. McQuillin, The Law of Municipal Corporations § 30.63 (3d ed. 1999) (the most important right of the abutter to a public highway incident to ownership of property is the right of access which includes both the abutter's right to go to and from his property and the use of one's property with the rest of the world so that family, guests, visitors and others may come and go to the abutter's property without hindrance or interruption). As recently as last term, all members of the Court would choose to come to Petitioner's aid. See *Kelo v. City of New London*, 545 U.S.___ (2005) (opinion of the Court delivered by STEVENS, in which KENNEDY, SOUTER, GINSBURG and BREYER, joined, at 16-17 stating a one-to-one transfer of private property "would certainly raise a suspicion that a private purpose was afoot" and can be confronted when the case arises; concurring opinion by KENNEDY, at 4 stating there is a "possibility that a more stringent standard of review than that announced in *Berman* and *Midkiff* might be appropriate for a more narrowly drawn category of takings. There may be private transfers in which the risk of undetected impermissible favoritism of private parties is so acute that a presumption (rebuttable or otherwise) of invalidity is warranted under the Public Use Clause."; dissenting opinion by O'CONNER in which REHNQUIST, SCALIA and THOMAS joined, at 12-13 observing that beneficiaries of unchecked taking power are likely to be those with "disproportionate influence and power in the political process" and stating that the Founders could not have intended this perverse result and dissenting opinion by THOMAS, at 18 "[i]f ever there were justification for intrusive judicial review of constitutional provisions that protect 'discrete and insular minorities,' surely that principle would apply with great force to the powerless groups and

individuals the Public Use Clause protects." (internal citation omitted) and noting the deeply perverse consequences of the Court's opinion as it encourages the strong and politically powerful to "victimize the weak."). Additionally, this case presents an opportunity for the Court to protect citizens from attacks on their First Amendment rights of free speech and association, the Fifth Amendment protection that private property not be taken except upon just compensation, the Fourteenth Amendment rights to procedural due process, substantive due process and the equal protection of the laws, the right of interstate travel and the protections of 23 U.S.C. § 206, 42 U.S.C. § 1983 and 42 U.S.C. § 1988. Nationwide, private property is under ever-increasing attack from well-financed recreational groups. See *Off-Highway Vehicle Recreation in the United States, Regions and States*, United States Department of Agriculture, June 2005, at 4 ("These unauthorized and unmanaged trails have attracted significant amounts of press and a variety of attention from both users and resource managers. Frequently the attention is contentious."); and *Rutland Herald*, August 29, 2005, story entitled, Federal money turns rail bed into recreational trail ("VAST, the organization that oversees snowmobiling in the state, will manage the $5.8 million included in the federal transportation bill that will pay most of the estimated $7.2 million costs ...."). Without proper checks, recreational groups such as VAST are able to steamroll their way over individual property owners like Petitioner who do not have the political connections and financial resources necessary to combat the assault to private property. Although Congress has spoken and its intent is clear that private property must not be impacted by recreational trails developed and maintained under 23 U.S.C. § 206, and state legislatures like Vermont's have annunciated a similar intent (see 10 V.S.A. § 441(c)), all to often there are governmental entities such as the Respondents who will wrongfully assist these groups to the constitutional detriment of private property owners.

To date, different forums in Vermont have proved hostile and suspect in addressing the Petitioner's claims. (Certainly, Respondents' own actions in other land-use matters have proved reprehensible.)[5] When the Petitioner first requested help from Cavendish to plow Old Bailey Hill

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[5] The Respondent Cavendish Selectboard uses reclassification of town highways as a weapon against those who speak out, they even use it against their own Selectboard members as the local newspaper of record for Cavendish recounts "it is difficult to escape a belief that [Selectpersons] Stearns, Ruth Gabranski, and to a lesser extent Wayne Gilcris, have it in for Churchill and are using this issue [down-classifying his road from class 3 to class 4] to punish him in some way." *Black River Tribune*, January 15, 2003. Appendix 39a. One year later, after a town-wide revolt led to the ouster of Selectman Gilcris, the new Selectboard voted to change Selectman Churchill's road back to class 3 and Churchill was "sitting at his place at the [voting] table with a split-face grin." *Black River Tribune*, February 25, 2004. Appendix 37a-38a. In regards to Respondent ANR, this Court itself has noted the criminal behavior of ANR. See *Vermont Agency of Natural Resources v. United States*, 529 U.S. 765, 771 (2000) (ANR personnel submitting false claims to the Environmental Protection Agency is an injury to the United States "which suffices to support a criminal lawsuit ...."). More than the Court's observation of the ANR's illegal actions, Vermont's own most-respected public servants were appalled at the ANR's actions in purchasing a large tract of Champion timber land to create the West Mountain Wildlife Management Area. Gubernatorial candidate James Douglas remarked "The key issue here is trust of government ... [t]he fact is that the people of Vermont were promised one thing by their Legislature and governor, and got something else." *Rutland Herald*, January 19, 2002. Representative Janice Peaslee argued the ANR reneged on promises made as to the future uses of the land, House Speaker Walter Freed believed he was hoodwinked by the ANR and Senate President Peter Shumlin observed that "government's only as good as its word and this summer our word [because of ANR's actions] didn't look very good." *Rutland Herald*, January 18, 2002. "What they [ANR] do is they get a bunch of environmental lawyers that get behind closed doors and hammer out an agreement amongst themselves which doesn't necessarily serve those who have used the Champion lands for generations." Senator Vincent Illuzzi, *Rutland Herald*, December 1, 2001. Auditor of Accounts Elizabeth Ready who had previously helped in writing the legislation to purchase the land noted that the ANR's agreement with the Nature Conservancy after the land was purchased did not reflect the spirit of the legislation and stated the ANR's actions put the "Legislature's and government's credibility ... on the line." *Rutland Herald*, November 6, 2001.

Road, as required by Vermont law, the Selectmen of Cavendish colluded with the Selectmen of the adjacent Town of Chester in their May 1997 meetings in forcing the location of the VAST trail onto this highway and retaliated against the Petitioner by down-classifying this highway to class 4. Next, after Petitioner initiated suit, the trial court refused to grant an injunction although the Respondents' actions blocking Old Bailey Hill Road constituted a *per se* nuisance and Cavendish's refusal to plow this highway violated the law and the trial court failed to find deprivations of the constitutional and statutory protections noted above. Ultimately, the trial court violated the Petitioner's right to due process when it misapplied the rules of civil procedure and failed to reopen the trial in contravention of the Orders of Dismissal. Lastly, the Vermont Supreme Court did not correct the trial court's abuse of discretion, wrongfully applied yet other rules of civil procedure and then incredibly issued its opinion under the signature of Associate Justice James Dooley who did not sit for oral argument and without the signature of judge Hayes, Specially Assigned, who did sit for oral argument—destroying the very structure of Petitioner's appeal.[6] At the very least, these events portray an impression that Petitioner's case and appeal were a bag-job not even

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[6] On September 21, 2005, Petitioner received the Vermont Supreme Court's Entry Order dated September 15, 2005 signed by judge Hayes (apparently issued because of Petitioner's inquires about this signature error) which replaces the initial Entry Order signed by Justice Dooley. No doubt Respondents will portray this as innocent housecleaning, yet from Petitioner's perspective this merely rubs Petitioner's face in the mess created by the Vermont Supreme Court's structural error in failing to provide the integrity of a sound appeal process—5 Justices and one judge "evaluating" and "reasoning" away liberties in a willy-nilly manner. Unless this Court corrects this matter, the Petitioner's cause will forever be under the cloud of the Vermont Supreme Court's questionable actions.

warranting the scrutiny of the Vermont Supreme Court.[7] Resolution of this matter before the Court, ensures that there are no backroom deals behind closed doors, self-interest voting with split-faced grins or worse.

Due process demands that court orders be clear, explicit and unambiguous. The trial court and the Vermont Supreme Court are holding the Petitioner to adherence to an unstated and newly defined requirement. Nowhere in the May 16, 2003 Orders of Dismissal is it expressly stated or even implied that Petitioner had to file a request with the clerk by the 90th day of the settlement period, rather than mail notice of such request by the 90th day. In cases too numerous to cite, courts hold that judicially-imposed conditions must be clear, explicit and unambiguous if they are going to declare a litigant in violation of that order. See *Pioneer* at 398 (Court found excusable neglect when it compared notice given in case under review with the model notice set out in the Official Bankruptcy Form and concluded the notice "left a 'dramatic ambiguity' in the notification and hence excused attorney from complying with the stated notice); *Canfield Van Atta Buick/GMC Truck, Inc.*, 127 F.3d 248, 250 (1997) ("For example, neglect may be excusable where the language of a rule is ambiguous or susceptible to multiple interpretations ...."); *Muze* at 495 ("dismissals for ... ambiguities in pleadings are not favored, we should similarly disfavor dismissal where the District Court's order does not include the language customarily used ....") (internal citations omitted); *State of Vermont v.*

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[7] The trial court's wrongful failure to reopen the trial allowed the wrongful deprivations of the Petitioner's constitutional and statutory protections to persist such that Petitioner was exposed to further hurtful events due to the Respondents' and the trial court's actions. See "April Fools" edition of the *Black River Tribune*, dated March 31, 2004 (Petitioner held out as the town's fool in the newspaper of record for the Cavendish and Chester area—had the trial been reopened in August of 2003 the Petitioner would have secured vindication of his rights by April 2004 and this article never would have been written). Appendix 35a-36a.

Rivers, 2005 VT 65, ¶ 9 ("[C]onditions that restrict a probationer's freedom must be especially fine-tuned."); *Choice Hotels* at 471 (due process dictates judicially-imposed conditions must be explicit and clear "because prejudicial dismissals for failure to meet the court's procedural conditions raise constitutional due process concerns, we should construe Rule 41(a)(2) to ease these concerns by requiring explicit and clear notice to plaintiffs when their failure to meet the court's conditions will result in prejudicial dismissal."). The Vermont courts cannot impose the ultimate sanction of dismissal on the Petitioner who had no notice of the manner in which the Vermont courts would interpret and apply the May 16, 2003 Orders of Dismissal.

The trial court *sua-sponte* and wrongfully analyzed Petitioner's request to reopen the trial under V.R.C.P. 60(b)(6).[8] A request to reopen a conditional dismissal is not to be reviewed under a Fed. R. Civ. P. 60(b) analysis.

> A conditional dismissal order is not an appealable final judgment, but rather, a mechanism whereby the court allows parties on the brink of settlement to avoid needless litigation but retains jurisdiction to reinstate the action or enforce the agreement, where appropriate. Because it is not a final judgment, the strictures of Rule 60(b) do not apply. It appears that the good cause requirement in this context is less stringent than the showing required in the Rule 60(b) context. *Kinan* at 33 (internal citation omitted).

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[8] Both the ANR and Chester posit that the trial court employed a V.R.C.P. 60(b)(6) analysis as these Respondents stated:

> "The trial court properly evaluated the [Motion to Resume Trial] under Rule 60(b)(6) …." Brief in the Vermont Supreme Court of ANR at 9.

> "The only stated basis in V.R.C.P. 60(b) having any applicability to the Motion to Resume Trial filed by [Petitioner] is the 'catch all' provision found in V.R.C.P. 60(b)(6)…." Brief in the Vermont Supreme Court of Chester at 12.

Moreover, the trial court's analysis was wrong because judge Teachout apparently employed a V.R.C.P. 60(b)(6) analysis rather than a V.R.C.P. 60(b)(1) analysis.[9] See *Pioneer* at 393 (Rules 60(b)(6) and 60(b)(1) "are mutually exclusive"). The procedural issue in this case is whether or not Petitioner timely requested the reopening of the trial. If Petitioner's service of a letter and Motion to Inform on Thursday August 14, 2003 (the last day of the ninety day settlement period where "[s]ervice by mail is complete upon mailing" per V.R.C.P. 5(b)) or its receipt by the clerk of the court on Monday August 18, 2003 (considered to be three days after August 14, 2003 per V.R.C.P. 6(a) and V.R.C.P. 6(e)) informing the Respondents and the court that Petitioner requests "resumption of the trial to be set at the earliest convenience of the court" is timely, then Petitioner's trial must be reopened. Appendix 29a-32a. The only other possibility is that Petitioner's request was untimely and Petitioner is partly to blame for the late request. "If a party is partly to blame for the delay, relief must be sought within one year under subsection (1) and the party's neglect must be excusable." *Pioneer* at 393. Under the trial court's own theory that Petitioner's request was untimely, the court was bound to employ a V.R.C.P. 60(b)(1) analysis.

In such circumstances as to whether a party's perceived untimely request should be excused for neglect, this Court requires an equitable analysis under Fed. R. Civ. P. 60(b)(1) and hence under V.R.C.P. 60(b)(1)—not conclusory statements like that employed by the trial judge in Petitioner's case. In determining whether there is excusable neglect the trial court must take account of "the danger of prejudice to the [non-movant], the length of the delay and its potential impact on judicial proceedings, the

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[9] Nobody knows for sure just what section of Rule 60(b) the trial court analyzed and without that knowledge the Vermont Supreme Court's decision is nothing more than a rubber stamp. Petitioner logically sets out throughout this Petition that any evaluation under Rule 60(b), even if appropriate, at the time of the trial court's denial of Petitioner's request to reopen trial must be under 60(b)(1).

reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Pioneer* at 395. Under this test, even if Petitioner's request was considered untimely, the trial court was required to grant the Petitioner's request to reopen the trial as the perceived late request was a result of excusable neglect.

The Vermont Supreme Court incorrectly held that the trial court did not abuse its discretion in denying Petitioner's request to reopen the trial. See *Murphy v. Dep't of Taxes*, 173 Vt. 571 (mem. 2001) and the decision in the instant case *Bidgood* at ¶ 9 (Vermont Supreme Court reviews "a Rule 60(b) decision narrowly, and will not overturn it unless the trial court abused its discretion."). Under the trial court's own theory that the Petitioner's request to reopen the trial was untimely, the trial court abused its discretion when it did not apply the law of V.R.C.P. 60(b)(1) (the only rule that would be controlling) to the facts of Petitioner's case. See *In re Cendant Corp. Prides Litigation*, 235 F.3d 176 (3rd Cir. 2000).

> [T]he District Court should properly have entertained an analysis of the factors constituting 'excusable neglect' to determine whether [the movant] had met them. To fail to do so is a failure on the part of the District Court to properly apply the law to the facts of this case and provides grounds for reversal on the basis of abuse of discretion. *Id.* at 182.

Since the trial court did not apply the law to the facts of Petitioner's case, the Vermont Supreme Court was required to hold that the trial court abused its discretion.

The Vermont Supreme Court summarily affirmed the trial court's denial of the Petitioner's request to reopen the trial. Petitioner received constructive notice on Thursday August 14, 2003 that the Respondents had not fulfilled the required contingency within the 90-day settlement period required by the Orders of Dismissal. The

parties had undertaken a course of dealing using the mails for inquiring into the progress of fulfilling the agreement. Petitioner waited until the very last day of the 90-day settlement period to see if any notice of fulfilling the agreement would be forthcoming. Rather than receiving actual notice of either fulfillment or failure of the agreement by mail from the Respondents, Petitioner received constructive notice of the failure of the agreement by the absence of any mail. In accordance with V.R.C.P. 6(e), Petitioner is entitled to three additional days beyond August 14, 2003 for his filing to be timely. The Vermont Supreme Court erroneously ignored the significance of Petitioner's mailing on Thursday August 14, 2003 of a letter and Motion to Inform and its sufficiency to reopen the trial. Further, the Vermont Supreme Court ignored the trial court clerk's actual receipt on Monday August 18, 2003 of the Petitioner's August 14, 2003 letter and Motion to Inform and erroneously found that this correspondence was not filed until August 25, 2003. The Petitioner can only be in one place at any given time—in either Massachusetts or in Vermont. As Petitioner's litigation was under the authority of the Orders of Dismissal of May 16, 2003, he was in Massachusetts waiting for notice via the mail from the Respondents of either fulfillment or non-fulfillment of the Stipulation of Settlement. On the last day of the settlement period, in full compliance with the Orders of Dismissal, when Petitioner received constructive notice that the agreement was not fulfilled, he mailed a letter and Motion to Inform on August 14, 2003 which requested "resumption of the trial be set at the earliest convenience of the court." Appendix 30a-32a. Petitioner simply cannot be in Massachusetts ready to receive mail from the Respondents on August 14, 2003 and at the same time be in Vermont filing a request to reopen the trial with the court clerk.

The Vermont Supreme Court's affirmance sets a trap for litigants acting in good faith. If Petitioner acted any earlier than the 90th day by mailing or filing, such action

would be viewed as hampering the Stipulation of Settlement i.e, the Respondents are entitled to the full 90-day settlement period, that is until August 14, 2003. Therefore, the Petitioner must wait until the 90th day, i.e., August 14, 2003 to act. On Thursday August 14, 2003 Petitioner was in Massachusetts as implicitly required by the Orders of Dismissal waiting for notice via the mail from the Respondents as to whether or not the agreement was fulfilled. When Petitioner became aware that the agreement was not fulfilled (by the constructive notice provided by the lack of any mail from the Respondents indicating that it was fulfilled) the Petitioner mailed a letter and Motion to Inform. The Vermont Supreme Court's affirmance, requiring Petitioner to file on the 90th day in Vermont is an impossibility for a litigant acting in good faith waiting for the mail to arrive in Massachusetts on this day. The rules of civil procedure cry out for guidance from this Court to assist litigants in the Petitioner's predicament.

Upon review, the Vermont Supreme Court's analysis is self-defeating, because it improperly applies the rules of civil procedure that it employs in its reasoning. This analysis correctly claims that V.R.C.P. 5(e) provides that "filing of papers with the court shall be made by filing them with the clerk of the court." *Bidgood* at ¶ 8 (internal quote marks omitted). Since this is true, the Petitioner's letter of Thursday August 14, 2003 and Motion to Inform were received and presented for filing with the clerk on Monday August 18, 2003, and hence filed in accordance with V.R.C.P. 5(e) on August 18, 2003, not August 25, 2003 as found by the Vermont Supreme Court. The clerk made a mistake and sent this correspondence back to the Petitioner explicitly noting the date of receipt and stating: "8/18/03 Mr. Bidgood: Please submit the required $35.00 filing fee with your motion. Thank you. Barb Frizzell Deputy Clerk." 2nd SPC 1, Appendix 29a. The clerk should have accepted the Petitioner's August 14, 2003 letter and Motion to Inform and filed them on August 18, 2003 and the Petitioner does

not bear the burden of the clerk's error. The Vermont Supreme Court should have consulted and reported the remainder of V.R.C.P. 5(e) which provides: "The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules." The May 16, 2003 Orders of Dismissal did not state that Petitioner had to submit a filing fee, or for that matter that the Petitioner had to make any formal motion, in order to properly request the reopening of the trial. Since Petitioner's letter of Thursday August 14, 2003 and Motion to Inform were in the clerk's office on Monday August 18, 2003 they were timely to reopen trial.

The Vermont Supreme Court *sua-sponte* and wrongfully analyzed Petitioner's request to reopen the trial by analogy to V.R.C.P. 3. Although this analysis at *Bidgood* ¶ 8 correctly quotes V.R.C.P. 3: "A civil action is commenced by filing a complaint with the court", the Vermont Supreme Court should have consulted and reported the remainder of V.R.C.P. 3 which further provides: "When an action is commenced by service, the complaint must be filed with the court within 20 days after the completion of service upon the first defendant served." V.R.C.P. 3. If the Vermont Supreme Court thought that the time requirements of V.R.C.P. 3 were controlling, Petitioner timely requested reopening under this rule because Petitioner complied with the equivalent procedure for filing a complaint. Petitioner first served notice by mail on the Respondents and on the trial court of Petitioner's request to reopen trial on August 14, 2003 followed by filing with the court clerk 3 days later on August 18, 2003—or even under the Vermont Supreme Court's erroneous construction of the filing date 11 days later on August 25, 2003. In either event the filing was within the 20 days allowed by V.R.C.P. 3.

In the federal courts, a Plaintiff's request to dismiss is handled under Fed. R. Civ. P. 41(a)(2). However, "[r]ule 41(a)(2) is silent as to *how* a district court must specify that its voluntary dismissal is prejudicial if its stated conditions

are not met, and few cases have addressed the issue." *Choice Hotels* at 471 (emphasis in original). The Fourth Circuit held that Rule 41(a)(2) "requires the district court's specification to be explicit and clear." *Id.* at 471. The court reached this conclusion because fairness to the plaintiff demands it before his failure to meet a judicially-imposed condition results in the draconian measure of forever being barred from having claims heard on the merits and because the district court's very purpose is to render judgments in accordance with the substantial rights of the parties in accordance with "the sound public policy of deciding cases on the merits ... and not depriving parties of their fair day in court." *Id.* at 471 (internal citations and quotations omitted). The Fourth Circuit noted that "Considerations of constitutional due process also suggest that the district court's warning must be explicit and clear." *Id.* 471, FN 2 (citing *Societe Internationale; Insurance Corp of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982) and *Hovey v. Elliot*, 167 U.S. 409 (1897)). If the over-arching condition that plaintiff's failure to meet the court's judicially-imposed underlying condition will result in a prejudicial dismissal must be explicit and clear, then it necessarily follows that the underlying condition itself must be explicit and clear so that the plaintiff is aware of just what action is required of him.

In *Choice Hotels* the underlying judicially-imposed condition was explicit and clear in regards to <u>how</u> and <u>when</u> a party must act to request to reopen the trial, i.e. "[t]he entry of this Order is without prejudice to the right of a party to *move* for good cause *within 30 days* to reopen this action if settlement is not consummated." *Id.* at 470 (emphasis added). In *Choice Hotels*, a party must move by filing the request to reopen in court on or before the expiration of 30 days. In Petitioner's situation, the judicially-imposed condition did not state how Petitioner must act, just that Petitioner had to act on or before the expiration of 90 days, i.e. "with leave to reopen within

ninety (90) days if the conditions set forth in paragraphs 12 and 13 of the Stipulation for Settlement are not satisfied." PC 15-17, Appendix 13a. Petitioner complied with the stated time requirement of when action had to be undertaken by acting on the 90th day. The judicially-imposed condition did not state at all how the Petitioner had to act, but from Massachusetts the Petitioner mailed his letter and Motion to Inform to the Respondents and the trial court on August 14, 2003, rather than traveling to Vermont and filing it with the court.

Petitioner can hardly be seen as having failed to comply with the judicially-imposed condition or of acting with delay or engaging in any conduct showing disrespect for the court. The Fourth Circuit further noted that the:

> policy of deciding cases on their merits is so strong that, when a plaintiff has committed a procedural error, we will allow a district court to impose on him the harsh sanction of prejudicial dismissal, only in the extreme cases, where the plaintiff has shown a clear record of delay or has engaged in contumacious conduct. *Choice Hotels* at 472 (internal citations and quotations omitted).

In *Muze* the final conditional dismissal order stated: "should settlement not be finalized by January 31, 2002, this case will be reinstated by application of any party." *Id.* at 493. Six days past the settlement deadline, on February 6, 2002, the plaintiff in *Muze* made an application by letter requesting the reopening of the case to the active docket. More than a year later, after the district court had failed to act on the plaintiff's request, the plaintiff made a second application. The district court denied the second application as untimely in a one-sentence order stating that the order "plainly stated that reinstatement had to be sought within the time specified for finalizing the settlement." *Id.* at 494. On appeal, the Second Circuit compared the language of the district court's conditional dismissal order with the language utilized in the usual form of order which provides

explicit and clear specification on how and when action must be taken. The usual form of order uses the language: "provided, however, that if settlement is not consummated within thirty days of the date of this order, either party may *apply by letter within the 30-day period* for restoration of the action ...." *Id.* at 494 (some emphasis in original and additional emphasis added). The Second Circuit found that the conditional dismissal order did not state when the plaintiff in *Muze* had to act and noted: "[a] district court's discretion to interpret its own order, does not extend to inserting a new provision." *Id.* at 494 (internal citations omitted). Ultimately, the Second Circuit held the conditional dismissal order was ambiguous and the plaintiff "*must* be allowed to reinstate its lawsuit." *Id.* at 495 (emphasis added). As noted in the Petitioner's situation, the judicially-imposed condition does not specify how the Petitioner must act in requesting to reopen the trial. In applying the logic of *Muze*, the trial court is not allowed to belatedly now define how the Petitioner had to act by inserting a new condition that Petitioner had to have filed his request with the clerk rather than apply by mail on the 90th day as Petitioner had done and the Petitioner must be allowed to reopen the trial.

In federal courts, if a judgment has entered under a mistake of fact, a plaintiff's request to reopen is analyzed under Fed. R. Civ. P. 60(b)(1). In *Cappillino*, after being informed that the parties had reached a tentative settlement, the district court entered a conditional dismissal order. The court noted the tentative nature of the settlement and stated: "[i]f the settlement falls through, you can reopen it within the 45-day period. *Id.* at 265 (internal quotations omitted). In response to an inquiry as to the appropriate procedure for reopening the case within 45 days, the court stated that: "a letter to the court, rather than a formal motion, would suffice." *Id.* at 265. As a result, the judicially-imposed condition was explicit and clear in regards to how and when a party must act to request to reopen the trial. i.e, a letter to

the court within 45 days was the appropriate procedure. Within the 45 day period, the plaintiff in *Cappillino* wrote the court a letter informing the court that she was dismissing her attorney and requested a conference to advance the case as quickly as possible. The court held a hearing and informed the plaintiff that the settlement had become binding. Eleven months later, new counsel for the plaintiff filed a Fed.R.Civ.P. 60(b)(1) motion asserting the court had made a mistake of fact in not treating the plaintiff's letter, mailed within the settlement period, as sufficient to reopen the trial. The district court denied this motion. On appeal, the Second Circuit implicitly held that it was a mistake of fact committed by the district court in not treating the plaintiff's letter as sufficient to reopen the trial. In reversing, the Second Circuit observed that the plaintiff "followed the court's suggested procedure for rejection of the settlement, mailing a letter to the court within the 45-day period." *Cappillino* at 266.

In *In re: 310 Associates*, 346 F.3d 31 (2003) the Second Circuit explained the use of Fed.R.Civ.P. 60(b)(1) to correct a district court's mistake of a fact. The Second Circuit cited to *Cappillino*, and noted that in *Cappillino* it held "that is was an abuse of discretion not to correct the obvious factual mistake in not treating plaintiff's pro se letter as a rejection of the settlement" and as a timely request to reopen the trial. *Id.* at 35. The Second Circuit went on to hold that the district court in *In re: 310 Associates* properly employed Fed. R. Civ. P. 60(b)(1) to correct the court's own mistake of fact and that it acted properly in vacating its prior order that was premised on that factual mistake.

Vermont precedents hold that a post-trial motion is timely when mailed within the specified time and then later filed with the court after the expiration of the specified time. See *Fournier* (V.R.C.P. 59(e) is properly complied with if party first serves notice by mail within 10 days and then later files with the court within a reasonable time thereafter). In *Fourneir*, the Vermont Supreme Court citing *Derosia* held

that a mother timely requested to alter or amend the judgment when she served her motion by mail within 10 days after judgment although her motion was not received and filed with the court until 11 days after judgment.

CONCLUSION

This petition for a writ of certiorari should be granted in order for the Court to provide the needed guidance as to the proper application of the rules of civil procedure in reinstating a conditional settlement. The direction will be of unmeasurable assistance in all of the federal courts and in all of state courts that model their procedural rules upon the federal rules. To say the least, it will ensure litigants are provided with the due process of law and it will prevent needless appeals. More importantly, the writ of certiorari should be granted so that the Court can provide notice to all of the federal, state and local governmental entities who plan to locate recreational trails within their jurisdictions that the constitutional and federal statutory rights of private citizens (not the least of which is private property) will be protected at every corner.

Respectfully submitted, October 4, 2005

Paul F. Bidgood
14 Fairbanks Street
West Boylston, Massachusetts 01583
(508) 835-8846

APPENDIX

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Appendix Page

ENTRY ORDER

VERMONT SUPREME COURT DOCKET NO. 2003-555

AUGUST TERM, 2005

PAUL BIDGOOD*, ANDREW BIDGOOD and GEORGE BIDGOOD	}	APPEALED FROM: Windsor Superior
v.	}	
	}	DOCKET NUMBER:
TOWN OF CAVENDISH, SELECTMEN OF TOWN OF CAVENDISH, STEARNS, BUSWELL, CHURCHILL, GLIDDEN, GILCRIS, and AGENCY OF NATURAL RESOURCES	}	29-1-99 Wrcv

[ENTERED: SEPTEMBER 15, 2005]

In the above-entitled cause, the Clerk will enter:

The entry order issued on June 8, 2005 in the above-captioned matter is withdrawn, and the attached entry order is issued in its place.

[ ] Publish

[x] Do Not Publish

BY THE COURT:

/s/
Paul L. Reiber, Chief Justice

/s/
Denise R. Johnson, Associate Justice

/s/
Marilyn S. Skoglund, Associate Justice

/s/
Katherine A. Hayes, Superior Judge,
Specially Assigned

/s/
Frederic W. Allen (Ret.), Chief Justice
Specially Assigned

ENTRY ORDER

2005 VT 64

SUPREME COURT DOCKET NO. 2003-555

APRIL TERM, 2005

Paul L. Bidgood	}	APPEALED FROM:
	}	
v.	}	Windsor Superior
	}	Court
	}	
Town of Cavendish, et al.	}	DOCKET NOS.
	}	29-1-99 and 436-9-99
	}	WrCv
		Trial Judge:
		Mary Miles Teachout

In the above-entitled cause, the Clerk will enter:

¶1. Appellant Paul Bidgood appeals a trial court order denying his request to rescind a settlement agreement and resume trial to adjudicate issues that the parties had resolved through the settlement agreement. We affirm.

¶2. This case involves a dispute between Mr. Bidgood and the Town of Cavendish over the reclassification of a town highway from Class 3 to Class 4. Mr. Bidgood sought to ensure winter access to his property, which fronts the highway, by filing two actions in Windsor Superior Court: (1) an appeal from the road commissioner's reclassification determination; and (2) a civil action seeking a declaration of the highway's legal status and asserting various tort claims against the Town of Chester, Cavendish,

a town manager, and the Agency of Natural Resources. The trial court consolidated both actions and held a trial.

¶3. During trial, the parties reached a comprehensive settlement agreement of all contested matters. In negotiating the agreement, Mr. Bidgood was represented by two attorneys. The court incorporated the settlement agreement into an Order of Dismissal on May 16, 2003, and dismissed the case with prejudice "with leave to reopen within ninety (90) days" if certain conditions in the settlement agreement were not satisfied. Accordingly, the deadline for reopening the case under the court's order was August 14, 2003.

¶4. On August 25, 2003, Mr. Bidgood filed a document dated August 14, 2003, and titled, "Motion to Inform The Court That Plaintiff Rescinds Settlement:" On October 2, 2003, Mr. Bidgood filed another motion titled motion to resume trial. The trial court denied Mr. Bidgood's motion to inform stating that it did not contain an appropriate request for court action. The trial court also denied the motion to resume trial, finding that plaintiff "has not shown grounds to set aside the Order of May 16, 2003 in a manner required by Rule 60(b) of the Vermont Rules of Civil Procedure," and that the contingency set out in the dismissal order was unsatisfied. Plaintiff appeals.

¶5. Mr. Bidgood requests this court to reach the merits and adjudicate his claims against the opposing parties. He also argues that the lower court lacked subject matter jurisdiction to dismiss the case because it failed to: (1) follow statutory procedures; (2) appoint commissioners; (3) stay the proposed reclassification; (4) make all interested persons parties to the action; and (5) bring the controversy before the Transportation Board.

¶6. We affirm because the doctrine of res judicata precludes Mr. Bidgood from collaterally attacking the validity of the order. "Res judicata bars litigation of a claim or defense if there exists a final judgment in former litigation in which the parties, subject matter, and causes of action are identical or substantially identical." Kellner v. Kellner, 2004 VT 1, ¶ 8, 176 Vt. 571, 844 A.2d 743 (mem.) (quotations omitted). Res judicata also bars parties from litigating claims that the parties should have raised in a previous proceeding. Id. A settlement agreement that is incorporated into a final judgment can be disturbed pursuant only to the procedures set forth in Vermont Rule of Civil Procedure 60(b). Id. ¶¶ 6,8 (discussing and relying on Johnston v. Wilkins, 2003 VT 56, 175 Vt. 567, 830 A.2d 695 (mem.)).

¶7. In the present case, the settlement agreement was incorporated into a final order. The parties are identical. The subject matter—reclassification and maintenance of a town highway—was central to the litigation that the settlement agreement resolved. Thus, Mr. Bidgood's renewed claims are barred by res judicata, and the final order controls.

¶8. The final order permitted Mr. Bidgood to reopen the case by August 14, 2003. He did not file his motion to rescind the settlement agreement until after that deadline, and thus the motion did not reopen the case. Although Mr. Bidgood's motion to inform was dated August 14, 2003, he filed it with the court on August 25. V.R.C.P. 3 ("A civil action is commenced by filing a complaint with the court . . . ."); V.R.C.P. 5(e) (filing of papers with the court "shall be made by filing them with the clerk of the court.") While Mr. Bidgood filed the motion with the clerk of the court, he was not timely because it was not filed until August 25, after the ninety-day deadline under

the settlement agreement. Therefore, the final judgment remains binding on Mr. Bidgood.

¶9. The final judgment may be disturbed pursuant only to Rule 60(b). The trial court treated Mr. Bidgood's motion to resume trial as a motion under Rule 60(b) and found that he showed no grounds under the rule to set aside the order. We review a Rule 60(b) decision narrowly, and will not overturn it unless the trial court abused its discretion. Murphy v. Dept. of Taxes, 173 Vt. 571, 573, 795 A.2d 1131, 1133 (2001) (mem.). The record contains no evidence that Mr. Bidgood acted under duress, or that an unfair bargaining process took place. Indeed, he was represented by two attorneys during trial and the negotiation process. Thus, the trial court did not abuse its discretion.

¶10. Mr. Bidgood attempts to challenge the superior court's subject matter jurisdiction over this case by arguing that the trial court failed to follow statutory procedures in reclassifying the highway. Title 4 V.S.A. § 113 confers jurisdiction on the superior court in all civil cases except in certain situations not applicable to this case. Mr. Bidgood invoked the jurisdiction of the superior court when he filed an action under Vermont Rule of Civil Procedure 75, and appealed the road commissioner's determination. Under § 113, the superior court had jurisdiction over these actions, and Mr. Bidgood's challenges to the correctness of the court's decision do not remove its jurisdiction. Thus, the settlement agreement controls and we, therefore, affirm.

Affirmed.

BY THE COURT:

/s/
Paul L. Reiber, Chief Justice

[ ] Publish

/s/
Denise R. Johnson, Associate Justice

[ ] Do Not Publish

/s/
Marilyn S. Skoglund, Associate Justice

/s/
Katherine A. Hayes, Superior Judge,
Specially Assigned

/s/
Frederic W. Allen (Ret.), Chief Justice
Specially Assigned

ENTRY ORDER

2005 VT 64

SUPREME COURT DOCKET NO. 2003-555

APRIL TERM, 2005

Paul L. Bidgood	}	APPEALED FROM:
	}	
v.	}	Windsor Superior
	}	Court
	}	
Town of Cavendish, et al.	}	DOCKET NOS.
	}	29-1-99 and 436-9-99
	}	WrCv
[ENTERED: JUNE 8, 2005]		Trial Judge: Mary Miles Teachout

In the above-entitled cause, the Clerk will enter:

¶1. Appellant Paul Bidgood appeals a trial court order denying his request to rescind a settlement agreement and resume trial to adjudicate issues that the parties had resolved through the settlement agreement. We affirm.

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a town manager, and the Agency of Natural Resources. The trial court consolidated both actions and held a trial.

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¶5. Mr.Bidgood requests this court to reach the merits and adjudicate his claims against the opposing parties. He also argues that the lower court lacked subject matter jurisdiction to dismiss the case because it failed to: (1) follow statutory procedures; (2) appoint commissioners; (3) stay the proposed reclassification; (4) make all interested persons parties to the action; and (5) bring the controversy before the Transportation Board.

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¶8. The final order permitted Mr. Bidgood to reopen the case by August 14, 2003. He did not file his motion to rescind the settlement agreement until after that deadline, and thus the motion did not reopen the case. Although Mr. Bidgood's motion to inform was dated August 14, 2003, he filed it with the court on August 25. V.R.C.P. 3 ("A civil action is commenced by filing a complaint with the court...."); V.R.C.P. 5(e) (filing of papers with the court "shall be made by filing them with the clerk of the court.") While Mr. Bidgood filed the motion with the clerk of the court, he was not timely because it was not filed until August 25, after the ninety-day deadline under the

settlement agreement. Therefore, the final judgment remains binding on Mr. Bidgood.

¶9. The final judgment may be disturbed pursuant only to Rule 60(b). The trial court treated Mr. Bidgood's motion to resume trial as a motion under Rule 60(b) and found that he showed no grounds under the rule to set aside the order. We review a Rule 60(b) decision narrowly, and will not overturn it unless the trial court abused its discretion. Murphy v. Dept. of Taxes, 173 Vt. 571, 573, 795 A.2d 1131, 1133 (2001) (mem.). The record contains no evidence that Mr. Bidgood acted under duress, or that an unfair bargaining process took place. Indeed, he was represented by two attorneys during trial and the negotiation process. Thus, the trial court did not abuse its discretion.

¶10. Mr. Bidgood attempts to challenge the superior court's subject matter jurisdiction over this case by arguing that the trial court failed to follow statutory procedures in reclassifying the highway. Title 4 V.S.A. § 113 confers jurisdiction on the superior court in all civil cases except in certain situations not applicable to this case. Mr. Bidgood invoked the jurisdiction of the superior court when he filed an action under Vermont Rule of Civil Procedure 75, and appealed the road commissioner's determination. Under § 113, the superior court had jurisdiction over these actions, and Mr. Bidgood's challenges to the correctness of the court's decision do not remove its jurisdiction. Thus, the settlement agreement controls and we, therefore, affirm.

Affirmed.

BY THE COURT

/s/
Paul L. Reiber, Chief Justice

[x] Publish

/s/
John A. Dooley, Associate Justice

[ ] Do Not Publish

/s/
Denise R. Johnson, Associate Justice

/s/
Marilyn S. Skoglund, Associate Justice

/s/
Frederic W. Allen (Ret.), Chief Justice
Specially Assigned

STATE OF VERMONT
WINDSOR COUNTY, SS.

Paul F. Bidgood, Andrew M. Bidgood, and George M. Bidgood,	)	
Plaintiffs	)	
v.	)	Windsor Superior Court
Town of Cavendish and Selectmen of the Town of Cavendish,	)	Docket No. 29-1-99-Wrcb
Defendants	)	

ORDER OF DISMISSAL

In this matter, Paul F. Bidgood is represented by his attorneys Tarrant Marks & Gillies and the Town of Cavendish is represnted by its attorneys Birmingham & Moore, P.C. Plaintiffs Andrew W. Bidgood and George M. Bidgood have already been dismissed from this matter by previous order of the Court.

Based upon the Stipulation for Settlement dated April 4, 2003, as amended, the Court orders as follows:

1. Docket No. 29-1-99Wrcb is dismissed WITH PREJUDICE, with leave to reopen within ninety (90) days if the conditions set forth in paragraphs 12 and 13 of the Stipulation for Settlement are not satisfied.
2. Each party shall pay their own costs.

5/16/03 /s/
Date Honorable Alan W. Cook

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-555

JULY TERM, 2005

Paul L. Bidgood	}	APPEALED FROM:
	}	
v.	}	Windsor Superior
	}	Court
	}	
Town of Cavendish, et al.	}	DOCKET NOS.
	}	29-1-99 and 436-9-99
	}	Wrcv

[ENTERED: JULY 12, 2005]

In the above-entitled cause, the Clerk will enter:

The motion for reargument fails to identify points of fact or law misapprehended or overlooked by the Court. Accordingly, the motion is denied. See V.R.A.P. 40.

FOR THE COURT

/s/
Paul L. Reiber, Chief Justice

/s/
John A. Dooley, Associate Justice

/s/
Denise R. Johnson, Associate Justice

/s/
Marilyn S. Skoglund, Associate Justice

/s/
Frederic W. Allen (Ret.), Chief Justice
Specially Assigned

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

CONSTITUTIONAL PROVISIONS

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES

Federal Statutes

23 U.S.C. § 206
Uses not permitted. A State may not obligate funds apportioned to carry out this section for (1) condemnation of any kind of interest in property. 23 U.S.C. § 206(g)(1).

Cooperation by private persons. (A) Written assurances. As a condition of making available apportionments for work on recreational trails that would affect privately owned land, a State shall obtain written assurances that the owner of the land will cooperate with the State and participate as necessary in the activities to be constructed. 23 U.S.C. § 206(h)(4)(A).

(B) Public access. Any use of the apportionments to a State to carry out this section on privately owned land must be accompanied by an easement or other legally binding agreement that ensures public access to the recreational trail improvements funded by the apportionments. 23 U.S.C. § 206(h)(4)(B).

42 U.S.C. § 1983
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . 42 U.S.C. § 1983.

42 U.S.C. § 1988
In any action or proceeding to enforce a provision of sections ... 1983 ... of this title ... the court, in its discretion,

may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs .... 42 U.S.C. § 1988(b).

Vermont Statutes

10 V.S.A. § 441
The development, operation, and maintenance of the Vermont trails system is declared to be a public purpose and in this context, the agency of natural resources together with other governmental agencies is authorized to spend public funds for such purposes and to accept gifts and grants of funds, property, or property rights from public or private sources to be used for such purposes where permission is granted. 10 V.S.A. § 441(c).

23 V.S.A. § 3201
'Trails maintenance assessment' means a permit issued by the Vermont Association of Snow Travelers, Inc. granting use of Vermont snowmobile trails on public and private land. 23 V.S.A. 3201(7).

23 V.S.A. 3202
A person shall not operate a snowmobile unless registered and numbered by the state of Vermont or other state or province offering registration reciprocity and displays a valid Vermont trails maintenance assessment decal adjacent to the registration decal on the left side of the snowmobile in accordance with this chapter .... 23 V.S.A. § 3202(a).

RULES

Federal Rules of Civil Procedure

Rule 60
On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1)

mistake, inadvertence, surprise, or excusable neglect . . . . Fed.R.Civ.P. 60(b)(1).

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: ... (6) any other reason justifying relief from the operation of the judgment. Fed.P.Civ.P. 60(b)(6).

Vermont Rules of Civil Procedure

Rule 1
They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action. V.R.C.P 1

The rules are based on the Federal Rules of Civil Procedure. Federal cases interpreting the Federal Rules are an authoritative source for the interpretation of identical provisions of the Vermont Rules. V.R.C.P. 1 Reporter's Notes.

Rule 3
A civil action is commenced by filing a complaint with the court, except that in any case where attachment of real or personal property or attachment on trustee process is not to be made, or goods are not to be replevied, an action may be commenced by the service of a summons and complaint. When an action is commenced by filing, summons and complaint must be served upon the defendant within 60 days after the filing of the complaint. When an action is commenced by service, the complaint must be filed with the court within 20 days after the completion of service upon the first defendant served. If service is not timely made or the complaint is not timely filed, the action may be dismissed on motion, including motion of the court pursuant to Rule 41(b)(1) .... V.R.C.P. 3.

Rule 5
Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney or party's last known address or, if no address is known, by leaving it with the clerk of the court. ... Service by mail is complete upon mailing. V.R.C.P. 5(b).

The filing of papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that a judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules. V.R.C.P 5(e).

Rule 6
In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a State or federal legal holiday, or, when the act to be done is the filing of some paper in court, a day on which weather or other conditions have made the office of the clerk inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. V.R.C.P 6(a).

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the

notice or paper is served upon the party by mail, three days shall be added to the prescribed period unless the notice or other paper is served by the court. V.R.C.P. 6(e).

Rule 59
A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment. V.R.C.P. 59(e).

Rule 60
On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect .... V.R.C.P. 60(b)(1).

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (6) any other reason justifying relief from the operation of the judgment. V.R.C.P. 60(b)(6).

Superior Court of Vermont
County of Windsor

ENTRY REGARDING MOTION

Bidgood et al vs. Cavendish et al **29-1-99 Wrcv**
[Birmingham/Carroll/Woodward/Earle]

Title: **Motion to Resume Trial,** No. 23
Filed on: October 2, 2003
Filed By: Pro Se, Attorney for:
Plaintiff Paul F. Bidgood

Response filed on 10/10/03 by Attorney Carroll

Response filed on 10/20/03 by Attorney Earle

_ Granted Compliance by_____

x Denied

_ Scheduled for hearing on: __ at ___; Time Allotted __

_ Other

Plaintiff has not shown grounds to set aside the Order of May 16, 2003 in the manner required by Rule 60(b) of the Vermont Rules of Civil Procedure. Neither has Plaintiff shown that the contingency of reclassification failed to occur.

Mary Miles Teachout
Judge

November 10, 2003
Date

Date copies sent to: 11/18/03 Clerk's Initials: BF

Copies sent to:

Attorney Matthew T. Birmingham III for Defendant Town of Cavendish

Attorney Matthew T. Birmingham III for Defendant Town of Cavendish Selectmen

Attorney Matthew T. Birmingham III for Defendant William Buswell

Attorney Matthew T. Birmingham III for Defendant Daniel W. Churchill

Attorney Matthew T. Birmingham III for Defendant Sandra F. Sterns

Attorney Matthew T. Birmingham III for Defendant Robert W. Glidden

Attorney Matthew T. Birmingham III for Defendant Wayne Gilcris

Attorney James F. Carroll for Interested Person Town of Chester

Attorney Caroline S. Earle for Interested Person State of Vermont Agency of Natural Resources

Attorney Philip C. Woodward

Plaintiff Paul F. Bidgood

Superior Court of Vermont
County of Windsor

ENTRY REGARDING MOTION

Bidgood et al vs. Cavendish et al **29-1-99 Wrcv**
[Birmingham/Gillies/Carroll/Woodward/Earle]

Title: **Motion to Inform the Court that Plaintiff Rescinds Settlement,** No. 18
Filed on: August 25, 2003
Filed By: Pro Se, Attorney for:
Plaintiff Paul F. Bidgood

Response: NONE

_ Granted Compliance by_____

_ Denied

_ Scheduled for hearing on: __ at ___; Time Allotted __

x Other

Dismissed as a motion, as it does not contain an appropriate request for court action.

Mary Miles Teachout
Judge

October 16, 2003
Date

Date copies sent to: 10/21/03 Clerk's Initials: BF

Copies sent to:

Attorney Matthew T. Birmingham III for Defendant Town of Cavendish

Attorney Matthew T. Birmingham III for Defendant Town of Cavendish Selectmen

Attorney Matthew T. Birmingham III for Defendant William Buswell

Attorney Matthew T. Birmingham III for Defendant Daniel W. Churchill

Attorney Matthew T. Birmingham III for Defendant Sandra F. Sterns

Attorney Matthew T. Birmingham III for Defendant Robert W. Glidden

Attorney Matthew T. Birmingham III for Defendant Wayne Gilcris

Attorney James F. Carroll

Attorney Caroline S. Earle

Attorney Philip C. Woodward

Plaintiff Paul F. Bidgood

STATE OF VERMONT
WINDSOR COUNTY, SS.

Paul F. Bidgood,	)	
Andrew M. Bidgood,	)	
and George M. Bidgood,	)	
	)	
Plaintiffs	)	
	)	
v.	)	Windsor Superior
Town of Cavendish,	)	Court
Town of Chester,	)	Civil Action
State of Vermont Agency	)	Docket No.
of Natural Resources	)	29-1-99-Wrcv
(Department of Forests,	)	Docket No.
Parks and Recreation)	)	436-9-99-Wrcv
and Richard Svec,	)	
	)	
Defendants	)	

MOTION TO RESUME TRIAL

NOW COMES Plaintiff Paul F. Bidgood and requests the Court to resume the trial in the above captioned cases. The plaintiff has earlier rescinded the Settlement Stipulation in accordance with its terms that allowed leave to reopen within 90 days if the Defendant Town of Cavendish did not comply with paragraph 12. Additionally, the plaintiff informs the Court that 1) he signed the settlement under the financial stress effacing more than $70,000.00 in legal fees and costs, with no end in sight as to what the final costs would be, with such financial position hemorrhaging his family's economic survival, 2) the plaintiff signed the settlement while under the physical stress of not having the stamina of seeing this case through as plaintiff was suffering from sleep apnea which was not diagnosed until after the settlement was signed when the plaintiff was able to see his

primary care physician in regards to the plaintiffs concerns of chronic and severe fatigue and 3) the plaintiff signed the settlement under the emotional stress, anguish and duress of seeing his family destroyed with constant quarreling with his wife over the mounting legal bills and costs, not having any quality time to spend with his wife and three school-aged children, because of the significant amount of time required to pursue these cases and seeing his father-son relationship destroyed by the events of these cases, because his father blames the plaintiff for the loss of class 3 highway maintenance on Old Bailey Hill Road.

Plaintiff has now refinanced his primary residence adding to the principal owed on his mortgage and will be paying off legal fees and costs for the next 15 years, the plaintiff is now under the care of an otolaryngologist for treatment of sleep apnea and the plaintiff's immediate family situation with his wife and three children is somewhat better as the plaintiff has terminated his legal representation so that there are no longer quarrels about mounting legal expenses, but his family still suffers from the time requirements, stress, anguish and duress resulting from these cases. Additionally, the Court should know that the plaintiff attempted in good faith to implement the terms of the settlement and began to clear land for a private drive, however plaintiff suffered heat stroke from this physically demanding undertaking for which an ambulance was called and plaintiff does not want to again be in a situation where there may be a repetition of such an incident.

In paragraph 5 of the Agency of Natural Resource's (Department of Forests, Parks and Recreation) ("the State") Motion To Stay Determination of Plaintiff's Motion To Rescind they refer to a letter circulated by the State to the various parties for future efforts to engage in a mediation session to salvage the Settlement Stipulation. The plaintiff informs the Court that there is no one more interested in

settling this matter than the plaintiff, however the plaintiff will not agree to any settlement that does not provide for 1) access to the plaintiff's property over a year-round maintained public highway, 2) an agreement that Cavendish Town Highway No. 36, Old Bailey Hill Road ends on the plaintiff's property before the Cavendish/Chester town line, 3) that the former public highway in Chester leading from near Bridge No. 70 on the Smokeshire Road towards the Cavendish/Chester town line has been discontinued and 4) the reimbursement of the more than $70,000.00 in legal fees and costs that the plaintiff has incurred. Furthermore, the plaintiff will not grant permission of any sort to the Vermont Association of Snowmobile Travelers to utilize the plaintiff's property. The plaintiff has responded to the State's letter indicating full support to a settlement of this case that provides for the above. Basically the plaintiff believes all defendants should come clean and put this mess behind them.

The plaintiff further informs the Court that the Town of Cavendish is apparently asserting jurisdiction over these cases as it has noticed a public hearing to classify Cavendish Town Highway No. 36, Old Bailey Hill Road to a class 3 town highway where the Town would only provide maintenance for three seasons of the year leaving plaintiff's property inaccessible from approximately mid-November to mid-May each year. The plaintiff requests this Court to resume the trial in these cases so that the plaintiff may secure a judgment ordering the defendants to provide the plaintiff and his family access to their property on Old Bailey Hill Road over a year-round maintained public highway so that the plaintiff and his family may use and enjoy their premises and be safe and secure in their persons and property, secure declarations as to the location of the end of Cavendish Town Highway No. 36, Old Bailey Hill Road before the Cavendish/Chester town line and the

discontinuance of the alleged public highway in Chester, along with an award of attorneys fees and costs.

DATED at West Boylston, Massachusetts, this 30th day of September 2003.

I, Paul F. Bidgood, hereby state that I served the Plaintiffs, Motion To Resume Trial, to all counsel of record, Caroline S. Earle, Esq., Phillip C. Woodward, Esq., James F. Carroll, Esq. and Matthew T. Birmingham III, Esq. via first class prepaid mail.

By: /s/
Paul F. Bidgood

Paul F. Bidgood
14 Fairbanks Street
West Boylston, MA 01583
(508) 835-8846


Mr. Bidgood:
Please submit the $35.00 filing fee with your motion.
Thank you.
Carol Frizzell
Deputy Clerk

August 14, 2003

Jane Ammel, Clerk
Windsor County Superior Court
P.O. Box 458
Woodstock, Vermont 05091-0458

Re: Bidgood et al. v. Town of Cavendish, et al.
Docket No: 29-1-99 Wrcv

Bidgood v. Town of Cavendish, et al.
Docket No: 436-9-99 Wrcv

Dear Jane:

Enclosed for filing, please find Plaintiff's Motion To Inform The Court That Plaintiff Rescinds Settlement.

Thank you for your attention to this matter.

Very truly yours,
/s/
Paul F. Bidgood

Cc: Caroline S. Earle, Esquire (w/encl.)
Phillip C. Woodward, Esquire (w/encl.)
James F. Carroll, Esquire (w/encl.)
Matthew T. Birmingham III, Esquire (w/encl.)

Paul F. Bidgood
14 Fairbanks Street
West Boylston, MA 01583
(508) 835-8846

August 14, 2003

Jane Ammel, Clerk
Windsor County Superior Court
P.O. Box 458
Woodstock, Vermont 05091-0458

Re: Bidgood et al. v. Town of Cavendish, et al.
Docket No: 29-1-99 Wrcv

Bidgood v. Town of Cavendish, et al.
Docket No: 436-9-99 Wrcv

Dear Jane:

Enclosed for filing, please find Plaintiff's Motion To Inform The Court That Plaintiff Rescinds Settlement.

Thank you for your attention to this matter.

Very truly yours,

/s/
Paul F. Bidgood

Cc: Caroline S. Earle, Esquire (w/encl.)
Phillip C. Woodward, Esquire (w/encl.)
James F. Carroll, Esquire (w/encl.)
Matthew T. Birmingham III, Esquire (w/encl.)

STATE OF VERMONT
WINDSOR COUNTY, SS.

Paul F. Bidgood, Andrew M. Bidgood, and George M. Bidgood, Plaintiffs	)	
v.	)	Windsor Superior Court
Town of Cavendish, Town of Chester, State of Vermont Agency of Natural Resources (Department of Forests, Parks and Recreation) and Richard Svec, Defendants	)	Civil Action Docket No. 29-1-99-Wrcv Docket No. 436-9-99-Wrcv

MOTION TO INFORM THE COURT THAT PLAINTIFF RESCINDS SETTLEMENT

NOW COMES Plaintiff Paul F. Bidgood and informs the Court that plaintiff rescinds settlement and requests resumption of the trail be set at the earliest convenience of the court.

DATED at West Boylston, Massachusetts, this 14th of August 2003.

I, Paul F. Bidgood, hereby state that I served the Plaintiffs, Motion To Inform The Court That Plaintiff Rescinds Settlement, to all counsel of record, Caroline S. Earle, Esq., Phillip C. Woodward, Esq., James F. Carroll, Esq. and Matthew T. Birmingham III, Esq. via first class prepaid mail.

By: /s/
Paul F. Bidgood

Selected Excerpts from Hearing on Plaintiff Paul F. Bidgood's Motion for Injunctive Relief of the Honorable Alan W. Cheever, dated January 4, 2000.

> The irreparable harm is also cited that the snowmobiles are using the property. But the snowmobiles have been using this Town Highway 36 for many years. . . And I find that the snowmobilers use of land has not been shown to cause any irreparable harm to [Petitioner]. PC 541.
>
> One of the issues that simply is a fact in this case is that the road is a class four road, that it was reclassified as a class four road. And because it's a class four road, the town selectmen are not required to perform winter maintenance on class four highways. PC 541.
>
> There are arguments about constitutional rights that may have been violated ... The [Petitioner's] right to travel, the [Fourteenth Amendment] equal protection clause. But the town and the state are not doing anything different for the [Petitioner], living on a class four road, than they are for other members of the community that are living on class four roads. The Town of Cavendish may keep all class three highways clear, but this is not a class three highway. ... there is an argument about affixing the Vermont Association of Snow Travellers' decal and whether that's a violation of the First Amendment. I find that it is not, that the [Petitioner] is not likely to succeed on that issue. PC 542.
>
> When I get to the very end, public interest, my concept of public interest is that the public is served by maintaining, by having the town and state have discretion to treat all individuals equally. And they

are maintaining that by treating all people on class three highways similar, and all people on class four highways similar as well, similar to other people within that group. PC 543-544.

The Black River Tribune

ESTABLISHED IN 1976

[redacted] Ludlow, [redacted], Mount Holly, Chester and Surrounding Towns

Volume XXV, Number 27 | Ludlow, Vermont | [redacted] | Wednesday, March 31, 2004 | 50¢ per copy

Llama Farms Locating in Ludlow

By JANET UPTON

LUDLOW - Will Ludlow and Vermont become the llama capital of the Northeast? You might think so with all the breeders and llama projects springing up in the Green Mountain State.

It appears that not only will the pretty painted ponies [illegible] be parading the streets of Ludlow, but the hills will be home to the real thing.

The *Tribune* has recently learned that llama farmers have bought properties on both North and South Hills in Ludlow and plan to move their llama breeding operations from New Mexico and Arizona to the greener pastures of Ludlow.

This, along with Barbara [illegible] little llama ranch, would bring the llama operations in the town to three, four if you count the painted llamas.

Why move from the sunny south to five-season Vermont?

Darryl Hoosic, a breeder from New Mexico, says it's quite obvious.

"Remember where the animal is originally from. These animals are used to extremes of heat and cold, but they prefer higher altitudes and greener pastures," he said.

"In Peru llamas and alpacas are, not only wool-bearing animals, but pack animals used to carry all manner of things into and out of the mountains of the South American Andes. We think Vermont's climate is very much like their original home," he said.

Patty Wynn, the second llama breeder coming to Ludlow, said that while llamas and alpacas are cousins of those ships of the desert—camels—they are accustomed to cold [illegible]

Continued Page 2

GMUHS Wins $2 Million Challenge Grant

By JACK COLEMAN

CHESTER - The Gilliam Watts Foundation of Walla Walla, Washington has offered G.M.U.H.S. one of its MoneyNerd Computer Challenge Grants. Fifty schools across the nation – one in each state – have been given this chance. The initial offer is capped at $2 million, but satisfactory performance with what the Foundation calls its "easy" funds can lead to "let out" second round grants in 2006.

What is unique about these grants is the fun that accompanies them. "We're sick and tired of hearing school administrators and boards saying that they can't do much to make education better because they don't have the money to do so," said Billy Watts in the press release announcing the awards. "We want to see what they can do if they have the money for a change."

The Foundation looked in each state for settings where there appeared to be enough brave people prepared to step up to the challenge. From among the finalists in Vermont, Green Mountain was selected, Mr. Watts said, for three reasons: "the relatively small number of computer illiterates among those involved in the school, the amount of awards won by the athletic teams for good sportsmanship, and the outstanding and meticulous effort the board puts into keeping the school's policy manual up to date." Black River High School, the other finalist, apparently could not match Green Mountain on those matters.

"I wasn't surprised that the Foundation chose us", Superintendent Ed Brown told the *Tribune*. "We had an expression in the military that you can accomplish [illegible]

Continued Page 2

Pugslie Soars

Hundreds of fair weather skiers took to the slopes during the wonderful beautiful spring skiing days. Joining them on his board was Pugslie the Pug dog, who decided to try some high flying at Okemo Mountain's new pipe.

Pugslie, the dog of John and Mable Addams, is quite the athlete. During the summer he scuba dives and water skis with his owners, but when winter comes around he gets out his snowboard, dons goggles, leaps into the open end of the attached boot and takes to the snow-covered slopes.

Pugslie came to the notice of the public over the winter, and fans have urged the Addams to send a video of his snowboarding talents to America's Funniest Animals. The show loved the video and plans to use it, but has not yet a definite date for its airing. Watch the Trib for that information.

Photo by Donald Dill, Ludlow

Special Election Called in Chester

By BETSY KNAPP

CHESTER - Chester voters will be asked to head for the polls on June 31st to vote on two important matters that The Town Fathers believe will attract a new tourist market to the small village nestled in the Upper Valley of Vermont.

(1) On the Agenda: McDonald's representatives are developing a presentation to bring the Golden Arches to Chester. This new and unique McDonald's would be housed in the long-empty Zackary's on Route 103. McDonald Spokesperson, Horatio "Dusty" Alger has suggested a "trail menu" tailored specifically to Chester-ites. The menu would include Moose McMuffins, Big Mac Road Kills and Low-Cal Dandelion Salads With Or With Croutons. "It's innovative, that's for sure," Mr. Alger conceded, "but we believe that Chester will be an excellent test market for the entire New England area. As an incentive, the first 100 customers in the new McDonald's will receive a Limited Edition of a Golden Hamburger sandwiched between two Gold-Plated Arches.

(2) On the Agenda: Voters will have a chance to raise their voices, first at a Special Town Meeting on April 11st and then later vote on the old Florida Hanging Chad Ballots as to whether The Village Green should be moved to the Grafton Road, in order to bring to Chester the largest Super K-Mart so far on record. It is said that Martha Stewart (if available) will cut the ribbon at the Grand Opening. Dignitaries from as far away as Ludlow and Andover are expected to be on hand.

Although Chester A. Arthur was not born in Vermont, as one of our former Presidents of the United States of America, a statue honoring him will be placed where the

Continued Page 2

[redacted]

By LEO GRAHAM

[illegible]

[redacted] It all started about six weeks ago. [redacted] was walking along the [redacted]. As he came to a crest the sun blinded him and he tripped on a rock and fell to the ground, hard. When he awoke the world looked different to him. He was struck, as for the first time by the beauty of the area and his camp. He was also struck, for absolutely the first time, by an instinct to share his good fortune with others.

From then on, [redacted] found himself waving at [redacted] going past. To his surprise and delight, they waved back. The new found feeling of goodwill made him consider his actions of the last six or seven years. He didn't like what the consideration told him. He knew he had to make amends.

[redacted] went to see the Town Manager, Richard Svec. He told Svec that he realized that the road really couldn't be [redacted] as he had previously contended [redacted]. He wanted to make amends for the trouble and expense he had put Cavendish through. Svec was gracious and he and [redacted] shook hands and promised to make a new start.

[redacted] next stop was to the Town's attorney, Matt Brennington. He wanted to know just how much his actions had cost the town in legal fees and wanted to think of a way to make the debt right. In truth, Brennington couldn't tell [redacted] just what the price was. But no matter, the gesture of good will went a long way in improving Brennington's opinion of his one-time opponent.

As word of [redacted] change of heart spread around the [redacted] and town

Continued Page 2

Oh No — More Snow!

Don't Take Your Snow Tires Off Yet

By JANET UPTON

LUDLOW - Warnings are screaming over the wires from the National Weather Bureau, Vermont's Weather Bureau, and meteorologists all over the Northeast about two storms converging on the Northeast in the next day or two.

Although it started as a hurricane in the tropics, as it moved north it became colder and collected more and more moisture changing it into a Nor'easter, that dreaded storm of the eastern seaboard.

And if that wasn't enough, a Canadian Alberta Clipper has moved south east across the Great Lakes and is picking up strength and lake water and is headed east toward New York and the Green Mountains.

Weather watchers have predicted it will converge sometime tomorrow night north of [illegible] in southern New England. The [illegible] of the storm [illegible] Vermont, [illegible] and [illegible] will be taking the brunt of the winter weather while farther south the precipitation could come in the form of rain or sleet and freezing rain.

Cape May to [illegible] and north along the coast all the way to the Bay of Fundy could see significant tidal action. Wave heights have been estimated to be in excess of 20 feet, with gale force winds driving them landward. Beach erosion and damage to the barrier islands is expected to be more serious than any we've seen this winter.

Emergency stations and public officials have made preparations [illegible] and will call in the National Guard if residents on the barrier islands and others in the path of the storm do not move.

[illegible]

Roads! Roads! Roads (Continue From Page 1)

country skiing communities emerge and wonderful things began happening to [illegible]. Small gifts began to appear on his door step. Sometimes just a card thanking [illegible] for his new-found generosity. Other times just a piece of maple candy would be left. [illegible]

[illegible]

Visits to Bennett's, Singleton's, and Black River Produce became pleasures that [illegible] looked forward to having. He met so many people so fast that keeping their names straight was impossible. [illegible]

[illegible]

could help the CCC with its legal fight to keep the McLean quarry from ever opening. He insisted that his work for the CCC be pro-bono, a fancy legal term for free. [illegible]

Then one sunset afternoon, [illegible] was again walking along his road. [illegible]

[illegible]

With apologies to St. Paul and Charles Dickens.

Ludlow Llama Farms (Continue From Page 1)

and mountains instead of sand and dust.

Wayel also said that while llamas can be spiteful and hard to get along with, they in no way emulate the bad manners of their desert cousins, especially when it involves the hand that feeds them. He said in this respect they seem to be much smarter than camels.

Unlike camels llamas are not big enough to carry riders, unless they are very little children, but they are capable of carrying burdens equal to their own weight, and because of this are invaluable tools for the Quechua Indians of Peru.

Although people keep llamas as pets, their main contribution to mankind is their wonderful wool that retains body-warmth and even has a tendency to shed water.

Over the past 10 years llamas have gained popularity as pack animals for campers and hikers in Vermont and elsewhere in the U.S. Several inns and commercial hiking outfitters in the state are already using llamas in this capacity.

The relocation of the two llama farms will take place over the summer. Wayel has bought property on North Hill and Hoosie on South Hill. Neither knew the other before they decided to relocate.

How did they find us? That credit goes to our Ludlow Llama friends who are organizing the painted llamas of summer for display in village. These folks set up a Ludlow Llamas website and as you would expect both llama breeders found it, the rest, as they say, is history.

Both Wayel and Hoosie called to find out how they could bid on the painted llamas when they went on the auction block later this year. After talking to Ludlow folks each decided they wanted to visit the Green Mountains.

You would think they would have relocated to parts of Vermont that is more farmland and open spaces, "not so," said Wayel.

"The idea of having the desert, rolling hills and miles from population centers, and mountains in a liberty [illegible] that also comes to big is a [illegible] just what I was looking for."

He suggested that the llama roundups, still considered by many in North America as exotic animals, draws tourists to the farms where they buy, buy, buy. Some even go home with a llama, and that all adds to the bottom line.

Both breeders plan to be relocated by fall's foliage season. No permits are needed for the llama because they are considered agricultural and have already been cleared by the Vermont Farm Bureau.

GMUHS Gets $$$$ (Continue From Page 1)

anything as long as you say "Yes, sir" in a convincing way. We'll find a way to say "Yes, sir" and then find a way to live with those conditions."

Paul Davenport, the school board's chair, gave credit to the Vermont School Board Association and the Howard Dean Education Center for their letters of support.

The chairman of the board's Policy Committee, who modestly asked that his name not be used, said "Well, you know, we're glad the Foundation liked our attention to the Policy, you know, balanced. Some people think, you know, that it is not all that, you know, important. But, you know, it matters every bit as much as salaries."

Even so the Wares Foundation assured the freedom of each winning school to choose its own path toward better education, it did set some binding conditions. These are the principal ones:

1. The school will rule itself out of any federal programs or federal rules such as come from "No Child Left Behind."

2. No student will receive a diploma without having read at least one Shakespeare play, one book by Charles Dickens, and five poems by Emily Dickinson.

3. Each student will also be required to prove that he or she knows who Tom Paine, Crispus Attucks, Elizabeth Cady Stanton, Walt Whitman, Sojourner Truth, Sacco and Vanzetti, Louis Brandeis, George Goodnow, Joseph McCarthy and Sandra Day O'Connor are.

4. As many as five members of the faculty must be offered a year's salary if they will resign quietly. Those offered this opportunity will be selected by a committee made up of the Principal, the head of the teachers' union, the head of the Boosters' club and Gertrude Wares from the school board. No written reports of any kind will be made public or preserved.

5. As many as five members of the faculty will be given salary increases of up to 50% in recognition of their educational leadership and positive contributions to the school and the group it serves. They will be chosen by that same committee.

6. An award of $50,000 each year will be given to the faculty member deemed to have come up with the most promising idea on how to motivate students to still higher standards, and to have shown that the idea works.

7. The school's student newspaper will not change its name each year.

8. The director of the students' annual musical will have full authority to ban any critic from an area newspaper from seeing the show.

"At first these conditions sounded onerous to me," said Superintendent Brown. "Some people might even call them micro-managing. But what the heck? Two million dollars aren't to be sneezed at even in today's world."

The conditions are non-negotiable, according to the Foundation. "We don't give money away willy nilly. That would be silly," Gillis Wares told the Tribune.

PLAYING WITH WORDS #161

By ROY STONE

April Fool's day seems a good time to try some more Tom Swifties. The trick with these is copying the author of the once-famous Tom Swift books for boys, to supply an adverb describing how Tom said what he did. But in our version, the adverbs should contain a pun or an alternative bit of humor.

1. "Look. Either we do the play about Prospero and Caliban or I'm having nothing to do with this year's show," said Tom____.

2. "I wish I'd written more of myself into the story," said Tom____.

3. I'm in favor of allowing nude bathing at

A Word to the Wise…

Thursday is April 1st and take what you read here with a grain of salt

…and…

DON'T FORGET TO TURN YOUR CLOCKS AHEAD SATURDAY NIGHT!

Special Vote (Cont. From Page 1)

Chester Tourist Bureau now stands.

On a separate ballot, voters will be asked to eliminate the Senior Year at the Green Mountain High School, and the board, take another step forward in getting our young people into college[illegible] through a [illegible] three-year program. [illegible] GMUHS will also initiate a plan of Tuition [illegible]. [illegible] Ivy League Colleges. Last but not least, [illegible] another ballot, the Fourth of July will be put to [illegible].

TOWN MEETING 2004

ATTACHMENT 3

The Black River Tribune

ESTABLISHED IN 1976
A Weekly Newspaper Serving Ludlow, Cavendish, Mount Holly, Chester and Surrounding Towns

Volume XXIV, Number 22 | Ludlow, Vermont | Wednesday, [illegible] | 50¢ per copy

Few Attend Jackson Gore Hearing Tuesday

By JANET UPTON

LUDLOW – Less than 20 Ludlow voters turned out Tuesday night for the statutory public hearing on the Jackson Gore rezoning amendments. Town previous hearings had been held before the Ludlow Selectboard and the same has been written about extensively in local newspapers.

By the time most opponents voters have heard all they want to on the issue and will vote their opinions at the polls next Tuesday.

Tuesday night Chester owner Tim Mueller said he hoped the amendments would pass so the Jackson Gore project could "be put to bed, hopefully, in a positive way, and the town could move on and deal with other important issues."

"We feel the completion of Jackson Gore will be a good thing for us and a good thing for the town in the long run," he said.

Mueller also said this was the last major expansion for Okemo. From now on it will mainly be maintenance and improvements. Responding to comments that Okemo would look to expand down the backside of Okemo was not fully, Mueller emphatically said "no".

Why the disconnect here

Okemo Mountain participated for the zoning amendments after being told by Planning Commission Chair Fred Bird that if they didn't the PC wouldn't match a concession.

The PC was hopelessly deadlocked and unwilling to find a compromise regarding the concern were that would eventually have limited the Jackson Gore (JG) development to its first phase.

Okemo had developed a Master Plan for JG, based upon the business mix of Ludlow ensuing benefit to allow use and of

Continued Page 3

Two Roads Down, One To Go

By LEO GRAHAM

CAVENDISH – On June 23rd 23, the Cavendish Selectboard finally completed a full round in deliberations on the fate of [illegible]. While the Board, sitting as a quasi-judicial body, deliberated and voted in secret, the outside of their vote because known. By a three to two vote on each road, the Board voted to exclusively look roads from Class IV (no maintenance) to Class II, year-round (maintenance during all four seasons). This re-versus action by that board shows a year ago to downgrade the roads.

Immediately after the meeting was reopened to the pub-lic there was a host of votes had taken place. [illegible] of the votes with [illegible] with [illegible] Selectmen who swore publicly at the end of Deliberation Road" last used the Town over the downgrading of their roads. The Board's action reverses those votes stood.

Board members Sandra Stetson and Rob Gilcreest voted to leave the roads as Class IV while [illegible] Thaler, and [illegible] to upgrade it to [illegible] Gilcreest to break the Stetson tie on matters of current interest including Town Action Boards, and the Cavendish Board Liz not stepped one for itself, there was acting to prevent bias from doing so. The Secretary of State's office has issued guidelines suggesting that in-terested members not vote on matters where they have a direct interest but those guidelines are advisory only and have

Continued Page 3

Preserving the Chester Academy

By LEO GRAHAM
lgraham@vt.net

CHESTER – For seventeen years, Chester resident Mike Leonard has been planning grand scenery for the purpose of preserving and repairing the old Chester Academy building on Main Street. He has been working with the Chester Historical Society, to obtain the Town has leased the building. Recently, Leonard was successful in gaining a $65,000 grant from the Vermont Housing Conservation Commission. With the grant, there is about $1 (1,000 available to begin to fix the building. The Historical Society has raised about $30,000, the Town has added $35,000 and the new grant rounds out the revenue. But the grant does not come without conditions. Some of those conditions would mean the Town, as presently drawing other things, any work done on the Academy would have to pass another from Vermont Historic Preservation and they can be exacting creatures. At present, any renovations can be specious where they connect or seem by the public we must look. Our original equipment where they can be seen. If that conditions cannot be met, the money must be returned whatever—we cannot have many years now—it is mandated.

Spaulding apparently told the Board that she was not opposed to the conditions that accompany the grants and that she was generally favorable to the idea of preserving the crumbling but still structurally sound Academy. But she insisted that the Board recognize the responsibilities that come with the money. In general, how the money is to be managed and who has the ultimate decision making authority for spending it are the issues Spaulding wanted the Board to confront.

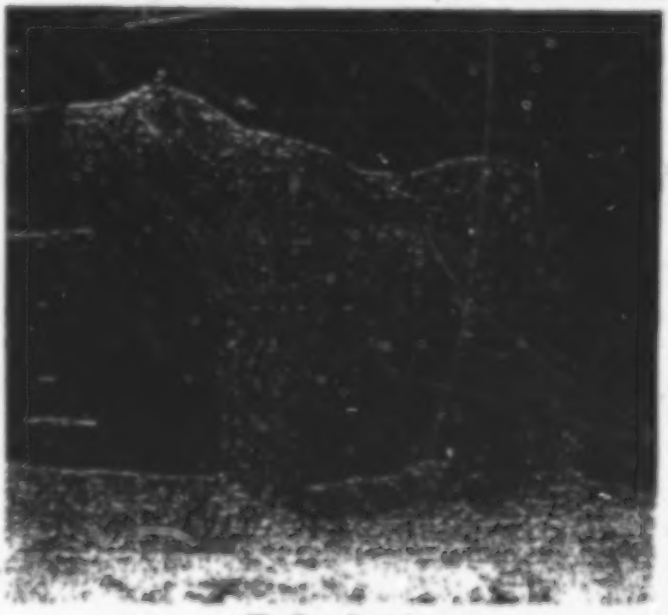
The grant has been made out to the Historical Society but rather to the Town, but the money must be spent on the Academy building.

Spaulding, citing long experience, said she would be glad to manage the cost and in fact oversee the renovations. If she is in charge of the money, she is inclined to charge of the renovations.

The Historical Society has had some preliminary engineering studies done on the Academy building. Using those year old figures, the estimate was that it would cost $165,000 to get the building back in shape. The most pressing needs are an updated heating system and a new roof. The two go hand-in-hand. The cost of heating the building without a new insulated roof would be prohibitive and putting a new roof in an unheated building of the historic that the new roof would have a much shorter lifespan than it would ordinarily because the dormer structures and frames and there in the winter would quickly condensation it.

Sometime Dick Jewett was concerned that heating the building even with a new roof would be expensive. He specifically mentioned the old single pane, windows in the Academy. They would have to be replaced to be-haven, Tony Pennington to the audience reminded the Board that Historical Preservation sees "a very strict standard" for some kinds of things. Pennington understood that new windows would be installed but they would have to look exactly like the windows there now. He said that, for example, the new windows now in the Town Hall would not meet that standard.

Continued Page 3



The Bear Stretch

The Green Pole Ski Shop's polar bear crew conquers and first place in the Commercial Free-for-All Category during Ludlow's Winter Carnival earlier this month. The frame was built by ski shop owner Ken Tiffett, and employees filled in the

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LWV Will Survey Ludlow Voters on Local Sales Tax

[illegible]

Cavendish Roads

(Continued From Page 1)

[illegible]

A Last Minute Letter

About the Black River Community Coalition

[illegible]

Chester Academy

(Continued From Page 1)

[illegible]

LPC-TV Gears Up for Town Meeting

Candidates Forum Running All This Week–Adelphia Channel 8

[illegible]

NOTICE OF PUBLIC HEARING BEFORE THE BOARD OF HEALTH

[illegible]

PLAYING WITH WORDS #157

By ROY STONE

The letters in the word PORTRAIT can be shuffled around to make many words of four or more letters. Can you find 25 of them? [illegible]

ANSWER TO LAST WEEK'S PUZZLE

[illegible]

LUDLOW POLICE LOG

[illegible]

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ATTACHMENT 6

EDITORIAL

It's Starting to Look Personal

The issue of putting up roads in Cavendish is getting prickly but is it also personal?

Last Monday, the members of the Cavendish Selectboard broke into uncharacteristic [redacted] Sandra Stearns, who has been [redacted] in her desire to put up some roads, and [redacted] who lives on one of the roads in question, began [redacted] among themselves in a way [redacted] for the [redacted] on a [redacted] The role of "Dad" was played by Board Chair [redacted] who had to break up the [redacted] and [redacted] to the meeting.

I don't know what Stearns [redacted] for putting up the roads. If it is to save money, no one has ever said so. They have authorized no studies on cost savings. What is clear is that at the end of their little tussle, there were hurt feelings on both sides. [redacted] looked put-out and Stearns looked [redacted] In over six years covering Cavendish, [redacted]

The goal here is not to chastise the board members in question. [redacted] is to discover if the road issue is one of good municipal [redacted] Why, is anyone's guess. First it was eight roads, now it's three. [redacted] road always makes the list.

In general, this is not a good time for Cavendish to be playing road politics. [redacted] is still suing the Town over its understandable decision to put up part of his road. (Once the [redacted] said it would not maintain its part of that road through the [redacted] the Town had little choice.) [redacted] seemingly inexhaustible attempts to force the road issue have already proven expensive for the Town if not for [redacted] who is a lawyer and represents himself.

The Board cannot afford to look [redacted] in its dealings with [redacted] or [redacted] who also lives on a road to be put up. [redacted] has already said he plans to be represented by a lawyer. [redacted] has also said he is unsure of just what criteria are being used to determine how to put up a road. Some of his questioning comes from his belief that the board has been shifting the criteria from time to time to suit an end he cannot understand.

If the issue isn't [redacted] prudent people would let the [redacted] issue go away before starting another fracas. If the issue [redacted] than [redacted]

LFG

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05-438

In The Supreme Court of the United States

PAUL F. BIDGOOD,

Petitioner,

v.

TOWN OF CAVENDISH, TOWN OF CHESTER, STATE OF VERMONT AGENCY OF NATURAL RESOURCES (DEPARTMENT OF FORESTS, PARKS AND RECREATION), RICHARD SVEC and JOHN KASSEL,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE VERMONT SUPREME COURT

SUPPLEMENTAL BRIEF OF PETITIONER

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INTRODUCTION

The decision of the Vermont Supreme Court should not be allowed to stand, because it incorrectly holds that a trial court may abuse its discretion in refusing to reopen a trial and thereby deprive the Petitioner of the due process of law.

REASONS FOR GRANTING THE WRIT

The Court must provide the previously unavailable guidance on the proper procedure to reopen a conditionally settled case to ensure litigants are provided with the due process of law and so that needless appeals are avoided. Of equal importance, the Court must announce that an individual's rights to personal liberties and rights to property may not be striped from the individual's identity and doled out to government-favored entities.

After the Court's opinion in *Kelo v. City of New London*, 545 U.S.___ (2005) (government authority may take one person's private property and give it to another private person or entity), there was great public outcry as to the validity of the opinion. Much debate ensued in Congress, in many state legislatures and indeed in Connecticut and in New London itself, a reappraisal of the desirability of taking private property such as Kelo's was undertaken. Within the Court itself, certain statements have been made questioning the wisdom of the takings regime at issue in *Kelo*. Justice Stevens, who wrote for the majority in *Kelo*, was quoted at a Las Vegas bar association meeting as stating "I was convinced that the law compelled a result that I would have opposed if I were a legislator.".

The *Kelo* opinion also spawned an interest to take Justice Souter's home in Weare, New Hampshire and transform it into the "Lost Liberty Hotel". Similarly, an

interest to take Justice Breyer's home in Plainfield, New Hampshire was undertaken to transform it into "Constitution Park." Although the motives of those behind the proposed takings of Justice Souter's and Justice Breyer's homes may be questioned, these proposals should bring home the hard reality that there are American citizens who would do harm to innocent property owners in order to advance their own private agendas.

Petitioner suffers from this hard reality. The Respondents are taking the Petitioner's right of access over the only public highway that provides access to Petitioner's property and are giving it to a private entity—the government-favored Vermont Association of Snowmobile Travelers (VAST) so that the only highway leading to Petitioner's property may be used as a recreational snowmobile trail. This chases the Petitioner out of Vermont, as his private property thereby becomes inaccessible and Petitioner is deprived of the use and enjoyment of his property. See *Okemo Mountain, Inc. v. Town of Ludlow*, 171 Vt. 201, 207; 762 A.2d 1219, 1225 (2000) ("when a public road is opened adjacent to private property, the owner of the abutting property obtains a right to access the public road by operation of law."). Petitioner knows of only one situation where an individual has been chased out of Vermont. See *Rutland Herald* dated January 4, 2005 article reporting that upon release, Douglas Bryant, a convicted kidnapper and rapist, has been chased out of Vermont, as no community desires to let Bryant reside therein. Petitioner has done nothing to bestow a similar fate upon him and his family and Respondents are wrong in their attempts to prevent Petitioner from residing in Vermont.

In Petitioner's Petition For Writ of Certiorari at page 17 FN 5 (describing the Town of Cavendish's (Cavendish) down-classifying of public highways to class 4 as a weapon to injure a sitting Selectboard member), the Petitioner

informed the Court of the type of adverse actions the Cavendish Selectboard will take in regards to public highways to harm a private property owner. Luckily for the affected Cavendish Selectman, one year later he was able to vote to reinstate class 3 status to the only highway leading to his property and he did so with a split-faced grin.[1] Also at page 10, the Petitioner informed the Court of the Cavendish Selectboard's and the Town of Chester (Chester) Selectboard's May 1997 meetings whereby they forced the location of the VAST snowmobile trail onto class 3, Old Bailey Hill Road, which is the only highway leading to Petitioner's property and where the trial judge could not help but to observe the palpable collusion between the Towns. Unfortunately, there are other Vermont Selectboards which take adverse actions in regards to public highways (and necessarily thereby affect the property rights of the abutting property owners who possess the property interest known as the "abutter's right of access") to further the Selectboard's own agendas.

In Jamaica, Vermont, the Selectboard closed down Turkey Mountain Road to further the Selectboard's agenda. See Vermont Attorney General's letter of December 1, 2004 reviewing the actions of both the Jamaica Selectboard and the Windham County Sheriff's Department that was enlisted by the Selectboard to enforce the closure of the road. This review was undertaken to determine whether or not any criminal conduct occurred. The review concluded that no criminal wrongdoing occurred although the Sheriff's Department threatened to arrest anyone using the road and the Selectboard was wrong to request the Sheriff's Department to enforce an invalid ordinance purporting to disallow the use of the road. Curiously, the Attorney

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[1] In Vermont, communities are required to provide year round maintenance for class 3 public highways, thereby assuring access to abutting property. There is no mandatory requirement to provide such maintenance for class 4 public highways.

General did not cite to or discuss 13 V.S.A. § 1026, Disorderly conduct, which provides that a person with "intent to cause public inconvenience, or annoyance or recklessly creating a risk thereof ... [o]bstructs vehicular ... traffic ... shall be imprisoned ... or fined ...." . In Chittenden, Vermont, the Selectboard did just the opposite and opened Green Road (a long since discontinued and grown over road) where no one even knows where the road's current alignment is located to further the Selectboard's agenda. See *Rutland Herald* articles dated May 18, 2004 (landowner Kathy Peterson quoted as saying "I don't understand what they're up to except to harass us" and "Who would have thought ... town officials would go and grab a chainsaw and try and prove a point."); June 8, 2004; July 13, 2004 and October 5, 2004. Also see currently effective *Rutland County Superior Court Order* dated July 8, 2004 enjoining Chittenden Selectboard from entering Peterson's private property. Demonstrably then, the adverse actions of some Vermont Selectboards in regards to public highways runs the gamut from closing them as in Jamaica, to opening them as in Chittenden or to something in between, such as restricting their use to only government-favored users as shown by Cavendish and Chester in Petitioner's case. That some Vermont Selectboards undertake such adverse actions in regards to public highways is not to prove that these actions are proper or desirable, but demonstrates the perverse nature of these actions.

Fortunately, not all Vermont Selectboards take the adverse actions in regards to public highways as undertaken by the Cavendish, Chester, Jamaica and Chittenden Selectboards. In Bridgewater, Vermont, the Selectboard dismissed a petition brought by 64 self-interested-residents (many VAST members or snowmobile enthusiasts) that requested reopening of a long since discontinued public highway over private property that had reverted to the

abutters, so that it could be used as a recreational VAST snowmobile trail. See *Valley News* dated February 26, 2005 article reporting "landowners and snowmobilers will duke it out at a special hearing of the Bridgewater selectboard". Also see Bridgewater Selectboard's Notice of Decision dated April 26, 2005 denying the request to open up this legally discontinued public highway over private property. Petitioner's plight is similar to this situation except, whereas the Bridgewater Selectboard voted to uphold private property, Cavendish and Chester did not. In May of 1997, many Cavendish and Chester area VAST members requested Cavendish and Chester to locate a recreational VAST snowmobile trail onto Old Bailey Hill Road. Cavendish and Chester acceded to this request and as a result Petitioner is unable to access his private property from approximately mid-November to mid-May—a 6 month long period!

It is Petitioner's understanding that there is currently a petition in Weare, New Hampshire and another petition in Plainfield, New Hampshire for the purposes of taking Justice Souter's property and Justice Breyer's property. The eventual outcome of these petitions for the taking of private property should not rest upon the proclivities of the local Selectboard members. If there is a vote to take these parcels of private property, I would hope that Justice Souter and Justice Breyer would wish that they were respectively a Weare and Plainfield Selectboard member so that they could vote with a split-faced grin like Cavendish's Selectman Churchill and regain their property. If they did not wish to be a Selectboard member themselves, then perhaps they will wish that their respective Selectboard is like the Bridgewater Selectboard which made a lawful decision protecting the private property rights of just a few citizens even though a fairly large number of other citizens had prevailed upon them in an attempt to force a recreational VAST snowmobile trail over a discontinued public highway leading through

that private property. One thing is certain, neither Justice Souter nor Justice Breyer will wish that their local Selectboard is anything like that of the Cavendish, Chester, Jamaica or Chittenden Selectboards which all undertake adverse actions against private property owners to further the Selectboard's own agenda.

Justice Souter's house, Justice Breyer's house and Petitioner's house are similarly situated. To prepare this Supplemental Brief, Petitioner traveled to Weare and Plainfield, New Hampshire and traveled around Justice Souter's and Justice Breyer's neighborhoods. All three houses are situated on properties that abut a gravel surfaced and town maintained public highway—Cilley Hill Road, Center of Town Road and Old Bailey Hill Road[2] respectively. All three houses are located at or near the end of the maintained part of the public highway. Just past these houses the maintained public highway changes to an unmaintained public highway. All three roads are effectively dead-end roads, as standard manufactured pleasure vehicles are not able to travel beyond Justice Souter's, Justice Breyer's or Petitioner's property (concrete barriers on Cilley Hill Road, washed out and soil surface on Center of Town Road (or Farnum Road) and on Old Bailey Hill Road. For the final leg of the journey to all three houses they are accessed by only one public highway. Justice Souter and Justice Breyer would be no more able to access their houses, if Weare and Plainfield forced the location of a recreational snowmobile trail onto South Sugar Hill Road and Cilley Hill Road leading to Justice Souter's house or onto Center of Town Road leading to Justice Breyer's house, or ceased providing maintenance to these public highways,

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[2] Petitioner's underlying actions seek to retain Old Bailey Hill Road's class 3 status, which the Respondents are trying to down-classify to class 4, and thereby be relieved of the maintenance responsibility, allow its use for a recreational VAST snowmobile trail and chase Petitioner out of Vermont.

than Petitioner's inability to travel to his house due to the Respondent's actions.

Justice Souter, Justice Breyer and Petitioner, all posses a private property right as abutters to access and use these highways by operation of law. When this private property right is threatened, private property owners like Justice Souter, Justice Breyer and Petitioner deserve the due process of law rather than "telephone justice" where Selectboard members collude amongst themselves, harass innocent property owners, enlist the Sheriff's Department to do their bidding or hide behind an apparent Attorney General's whitewash of their criminal conduct.

Nature abhors a vacuum. If something less than unqualified justice is provided by the American legal system, and citizens are left to accept "telephone justice," our country's claim that we are a nation ruled by laws rings hollow. Private property owners, like Justice Souter, Justice Breyer and Petitioner, need to know that, if a governmental entity attempts to take their private property by taking their abutter's right of access over the only public highway leading to their property, their redress is to an American legal system that will hear their concerns in good faith and according to the due process of law, anything less, as so far afforded to the Petitioner by the Vermont court system, is unacceptable.

CONCLUSION

For the above reasons, and for those previously stated in Petitioner's Petition For Writ of Certiorari, the Court should grant this petition. Or more simply, the Court should grant this Petition and announce to all local, state and federal governmental entities that private property will be protected at every turn and that in regards to public highways, the proper and lawful actions of the Bridgewater,

Vermont Selectboard is to be emulated, while the type of adverse actions undertaken by the Cavendish, Chester, Jamaica and Chittenden Selectboards is to be eschewed.

Respectfully submitted, November 18, 2005

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